CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, and Notices

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 28 SEPTEMBER 21, 1994 NO. 38

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 94–72)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR AUGUST 1994

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday: None.

Greece drachma:

August 1, 1994	$0.004191
August 2, 1994	.004188
August 3, 1994	.004160
August 4, 1994	.004184
August 5, 1994	.004188
August 8, 1994	.004190
August 9, 1994	.004182
August 10, 1994	.004196
August 11, 1994	.004190
August 12, 1994	.004231
August 15, 1994	.004252
August 16, 1994	.004252
August 17, 1994	.004242
August 18, 1994	.004260
August 19, 1994	.004281
August 22, 1994	.004303
August 23, 1994	.004280
August 24, 1994	.004259
August 25, 1994	.004254
August 26, 1994	.004200
August 29, 1994	.004173
August 30, 1994	.004177
August 31, 1994	.004177

South Korea won:

August 1, 1994	$.001241
August 2, 1994	.001241
August 3, 1994	.001241
August 4, 1994	.001241

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for August 1994 (continued):

South Korea won (continued):

August 5, 1994	$.001241
August 8, 1994	.001241
August 9, 1994	.001239
August 10, 1994	.001238
August 11, 1994	.001238
August 12, 1994	.001238
August 15, 1994	.001236
August 16, 1994	.001236
August 17, 1994	.001236
August 18, 1994	.001238
August 19, 1994	.001239
August 22, 1994	.001238
August 23, 1994	.004280
August 24, 1994	.001239
August 25, 1994	.001241
August 26, 1994	.001242
August 29, 1994	.001242
August 30, 1994	.001243
August 31, 1994	.001239

Taiwan N.T. dollar:

August 1, 1994	$.037679
August 2, 1994	.037594
August 3, 1994	.037636
August 4, 1994	.037636
August 5, 1994	.037722
August 8, 1994	.037763
August 9, 1994	.037799
August 10, 1994	.037785
August 11, 1994	.037787
August 12, 1994	.037804
August 15, 1994	.037764
August 16, 1994	.037764
August 17, 1994	.037750
August 18, 1994	.037779
August 19, 1994	.003788
August 22, 1994	.037908
August 23, 1994	.037958
August 24, 1994	.037987
August 25, 1994	.038139
August 26, 1994	.038066
August 29, 1994	.038093
August 30, 1994	.038197
August 31, 1994	.038168

Dated: September 2, 1994.

MICHAEL MITCHELL,
Chief,
Customs Information Exchange.

(T.D. 94–73)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR AUGUST 1994

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 94–56 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday: None.

Finland markka:	
August 22, 1994	$0.199382
August 23, 1994	.198275
Norway krone:	
August 30, 1994	$0.161329

Dated: September 2, 1994.

MICHAEL MITCHELL,
Chief,
Customs Information Exchange.

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19 CFR Parts 4, 24, 122, 123, and 134

(T.D. 94–74)

PAY REFORM FOR CUSTOMS INSPECTIONAL SERVICES

RIN 1515–AB30

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adopting final rules to implement, in part, those provisions of the Omnibus Budget Reconciliation Act of 1993 that provide for overtime and premium pay for Customs Officers performing inspectional services. This document addresses the public comments submitted in response to the interim regulations which initially implemented the pay reform provisions, and makes certain changes to those interim regulations in response to the public comments and in order to add clarity and improve the readability of the final regulations.

EFFECTIVE DATE: October 12, 1994.

FOR FURTHER INFORMATION CONTACT: Kevin Cummings, Office of Workforce Effectiveness and Development (202) 927–1391.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 312) (the 1993 Act) was signed into law. Part II of Subchapter D of Title XIII of the 1993 Act (107 Stat. 668)—popularly referred to as the Customs Officer Pay Reform Amendments (COPRA)—amended section 5 of the Act of February 13, 1911 (19 U.S.C. 261 and 267) to reform the overtime—and establish a premium—pay system by which Customs Officers who perform inspectional services would be compensated. In general, while the COPRA retained the basic double-time compensation rate for overtime services, its three sections (sections 13811–13813) made certain changes concerning how and when such Customs Officers would be compensated.

Section 13811 (codified, in part, at 19 U.S.C. 267) amended 19 U.S.C. 261, 267, and 1450 (and repealed 19 U.S.C. 1451a) to create a new and exclusive overtime compensation and premium pay schedule for Customs Officers performing inspectional services, and required the Secretary of the Treasury to promulgate regulations to prevent certain abuses that developed under the old pay system. Section 13812 amended 5 U.S.C. 8331(3) to provide additional benefits for Customs Officers; it allows overtime compensation to be included in the calculation of Federal retirement annuities, up to an amount equal to 50 percent of the applicable statutory pay limitation, and authorizes the payment of cash awards to Customs Officers for foreign language proficiency. Section 13813 amended 19 U.S.C. 13031(f)(3) to make certain adjustments concerning reimbursements from the Customs User Fee Account.

On December 28, 1993, Customs published as T.D. 94–2 interim regulations in the Federal Register (58 FR 68520) to implement the provisions of section 13811 of the 1993 Act. (The provisions of sections 13812 and 13813 of the 1993 Act were not dealt with in that document; the regulations implementing those aspects of the pay reform provisions will be issued by the Office of Personnel Management and Customs at a later date.) The interim regulations amended and revised certain sections in parts 4, 24, 122, 123, and 134 of the Customs Regulations (19 CFR parts 4, 24, 122, 123, and 134) and solicited comments concerning these changes.

Three parties submitted comments regarding one or more aspects of the interim regulations. The comments received, and Customs responses to them, are set forth below.

DISCUSSION OF COMMENTS

The comments received raised, in part, six areas of concern that will be responded to in this document:

(1) Customs interpretation of the exclusivity clause (19 U.S.C. 267(c)(2)) regarding when and how shift differential allowances would be paid (19 CFR 24.16(a));
(2) whether the definition of "regularly-scheduled administrative workweek" precluded considerations of other, alternative work schedules (19 CFR 24.16(b)(16));
(3) the propriety of defining "work assignment priorities" in agency regulations (19 CFR 24.16(d));
(4) the inclusion of workers compensation benefits in the listing of categories for which Customs Officers may receive pay for work not performed (19 CFR 24.16(e)(2)(ii));
(5) the payment of commute compensation when the overtime assignment begins 16 hours or more after the last regularly scheduled assignment (19 CFR 24.16(f)(2)(v)), and;
(6) the exclusion of workers compensation benefits from any applicable pay cap calculations (19 CFR 24.16(h)).

Certain other issues raised by the National Treasury Employees Union (NTEU, one of the parties submitting comments) are the subject of pending litigation before the United States District Court for the District of Columbia (Civil Action No. 94–0163, filed January 31, 1994). As it would be inappropriate for Customs to discuss those issues at this time, those comments are not addressed in this document. We now address the identified areas of concern in turn.

§ 24.16(a) Interpretation of exclusivity clause.

Comment:

Although the 1993 Act prohibits employees who are paid overtime under subsection (a) of the statute or premium pay under subsection (b) of the statute from receiving "* * * pay or other compensation for *that work* under any other provision of law" (emphasis in original), the exclusivity clause contained in the 1993 Act does not divest employees of their right to receive payment under other applicable pay statutes for work performed during periods for which no 1993 Act payments are received. For example, an employee may be assigned to a night shift for which no night work differential is payable under the 1993 Act (11:00 a.m. to 7:00 p.m.). That employee should still be paid night shift differential from 6:00 p.m. to 7:00 p.m. under the Federal Employees Pay Act (FEPA) or other applicable law. The interim regulations should be modified to reflect this entitlement.

Customs Response:

Customs disagrees. With enactment of the COPRA in the 1993 Act, Congress created a total pay and compensation system unique to the inspectional duties performed by Customs Officers. The establishment of this new system effectively removed those officers from coverage

under any other statute for pay and compensation purposes. Accordingly, no change to § 24.16(a) is made.

When the COPRA were promulgated, Congress reasoned that its purpose in requiring Customs Officers to work 40 hours in a week or 8 hours in a day, without regard to the hour of the day or the day of the week, before they qualify for overtime pay, was to encourage Customs to adjust its inspectional resources to meet actual trade patterns, rather than forcing the trade community to adjust to a predetermined Customs workday. Also, Congress wanted Customs to measure workload and trade patterns at each of its ports and then adjust work schedules to meet that demand while using as little overtime as possible. *See,* "Report of the Committee on the Budget House of Representatives on Omnibus Budget Reconciliation Act of 1993", Report 103–111 (May 25, 1993), p. 573. Since section 267(c)(2) clearly provides that a Customs Officer who receives overtime pay under subsection (a) (19 U.S.C. 267(a)) or premium pay under subsection (b) (19 U.S.C. 267(b)) for time worked may not receive pay or other compensation for that work under any other provision of law, it is axiomatic that Congress' explanation in the context of overtime pay is equally applicable to the payment of premium pay differentials, *i.e.,* night shift pay. And, as no allowance for night work differential premium pay is authorized under the Customs Officer Pay Reform provisions where less than a majority of night work hours is worked during the specified time periods (19 U.S.C. 267(b)(1)–(3), 19 CFR 24.16(g)(3)(i)–(iii)), it is clear that the 1993 Act does divest Customs Officers—but not other Customs employees—of their right to receive payment under other applicable pay statutes for work performed. Any other interpretation of section 267(c)(2) would render the express limitation meaningless.

In the scenario presented in the commenter's example, the payment of night differential premium pay is not authorized because the Customs Officer, as defined at 19 U.S.C. 267(e)(1) and subject to the overtime and premium pay provisions of 19 U.S.C. 267, does not work a majority of hours between any of the three time frames established by Congress for payment of such premium pay. *See,* 19 U.S.C. 267(b)(1)(A) through (C). Although the Customs Officer is officially assigned to work an 8-hour shift which goes past the, heretofore, traditional working day of 6:00 p.m., no night work differential is authorized under the exclusivity of pay provision under the COPRA (19 U.S.C. 267(c)(2)); the terms of the exclusivity provision expressly preclude dual pay/compensation entitlement considerations under other Federal pay statutes.

§ 24.16(b)(16) Definition of "regularly-scheduled administrative workweek".

Comment:

Regarding the definition of "regularly-scheduled administrative workweek", the following sentence should be added, "This section is not meant to prohibit consideration of alternative work schedules at a local level" to reflect the provisions of 5 CFR 610.121 and Article 21, Section

3A of the National Agreement between Customs and the National Treasury Employees Union (NTEU).

Customs Response:

The pay reform provisions of the 1993 Act do not affect or otherwise address the question of alternate work schedules (AWS), which has a separate statutory basis. *See,* 5 U.S.C. 6120 *et seq.* We believe that the addition of the requested sentence is unnecessary. Accordingly, no change to § 24.16(b)(16) is made.

§ 24.16(d) "Work assignment priorities"/(annuity integrity).

Comment:

The NTEU objects to the inclusion of work assignment priorities provisions in the regulations (§ 24.16(d)), as these issues are negotiable under the terms of the Civil Service Reform Act. Especially objectionable is the inclusion of the overtime earnings "band" in § 24.16(d)(2).

Response:

Customs agrees that the inclusion of the equalization provision in the work assignment priorities may be overbroad as written and could be subject to negotiations under the terms of the Civil Service Reform Act; however, Customs believes that the other two principles (alignment and least cost) are properly contained in the regulations, as they are in accordance with the provisions of 19 U.S.C. 267(d)(1), which require the Secretary of the Treasury to promulgate such regulations as will prevent the abuse of callback work assignments and commuting time compensation. Accordingly, § 24.16(d) is revised by deleting the equalization principle and replacing it with a more restricted "annuity integrity" principle that is more in accordance with the provisions of 19 U.S.C. 267(d)(2), which requires the Secretary to promulgate such regulations as will prevent the disproportionately more frequent assignment of overtime work to Customs Officers who are near to their retirement.

Annuity integrity is based on the average yearly amount of overtime Customs Officers worked during their career with Customs. Under annuity integrity the amount of overtime that can be worked by a Customs Officer who is within 3 years of his/her statutory retirement eligibility, *see,* 5 U.S.C. chapters 83 or 84, is limited to the average yearly number of overtime hours the Customs Officer worked during his/her career with the Customs Service. If the dollar value of the average yearly number of overtime hours worked by such Customs Officer exceeds 50 percent of the applicable statutory pay cap, then no overtime earning limitation based on this annuity integrity provision would apply. Waivers concerning this annuity integrity limitation may be granted by the Commissioner of Customs or the Commissioner's designee in individual cases in order to prevent excessive costs or to meet emergency requirements of Customs. Customs believes that this principle of annuity integrity is in accordance with the provisions of 19 U.S.C. 267(d)(2) and, as such, properly belongs in the regulations.

§ 24.16(e)(2)(ii) Including workers compensation benefits in list of payment categories for work not performed.

Comment:

The NTEU requests the inclusion of workers compensation benefits to the listing of categories for which Customs Officers may receive payment for work that is not performed.

Customs Response:

Unlike the form of workers compensation enumerated in this section (continuation of pay under the workers compensation law, which is paid by the employing agency), workers compensation benefits—in the form of compensation for lost wages—are paid by the Department of Labor. *See,* 5 U.S.C. 8101 and 20 CFR part 10. As this latter form of workers compensation is not within the direct control of the Secretary of the Treasury, its inclusion at § 24.16(e)(2)(ii) would be inappropriate. Accordingly, no change to § 24.16(e)(2)(ii) is made.

§ 24.16(f)(2)(v) Payment of commute compensation.

Comment:

The commute compensation provisions include a section that a Customs Officer will not be paid for commute time if the overtime assignment begins 16 hours or more after the last regularly scheduled assignment. This section makes it extremely difficult for those inspectors that work Monday through Friday to serve the public on Saturdays and Sundays.

Customs Response:

This eligibility condition for commute compensation is statutory. *See,* 19 U.S.C. 267(a)(2)(B)(ii)(I). Thus, Customs cannot deviate from the statutory requirements, but does note that the additional compensation—a flat 3 hours at the basic pay rate—is in addition to callback pay. Accordingly, no change to § 24.16(f)(2)(v) is made.

§ 24.16(h) Excluding workers compensation benefits from list of payment categories subject to pay cap limitations.

Comment:

The NTEU requests the exclusion of workers compensation benefits and back pay awards and settlements from the listing of categories not subject to any applicable pay cap calculations.

Customs Response:

Regarding the exclusion of workers compensation benefits from the list of payment categories subject to pay cap limitations, for the reasons given above at § 24.16(e)(2)(ii), no change to § 24.16(h) is made. Regarding the exclusion of back pay awards and settlements, the current regulatory language provides that "awards made in accordance with back pay settlements" shall not be applied to any applicable pay cap calculations. This correctly conveys the fact that such awards are exempt. Accordingly, no change to § 24.16(h) is made concerning this point.

ADDITIONAL CHANGES TO THE REGULATIONS

In addition to the changes discussed above in connection with the analysis of comments, the regulatory texts as set forth below incorporate certain editorial or other non-substantive changes to the interim regulations to add clarity and improve the readability of the final regulations. The sections of the interim regulations affected by these changes are indicated below.

§ 24.16(b) Definitions.

As the definitions of "commute compensation" (19 CFR 24.16(b)(5)), "overtime pay" (19 CFR 24.16(b)(13)), and "premium pay differential" (19 CFR 24.16(b)(15))—now denominated § 24.16(b)(14), see next paragraph below for explanation on redenomination—encompass similar elements pertaining to compensation, the wording of these three sections is recast to employ a parallel construction for ease of readability and to add clarity to their exclusive meanings.

Because of the change to § 24.16(d) discussed above under the Discussion of Comments, a definition for "participating group" (19 CFR 24.16(b)(14)) is no longer needed. Accordingly, in § 24.16(b), paragraphs (15) and (16) are redenominated paragraphs (14) and (15), respectively.

§ 24.16(c) Application and bond.

Although the interim regulations did not make any changes to the provisions of § 24.16(c), because this section references Customs "employees" rather than Customs "Officers", the term "employee" in paragraphs (1) through (3) is replaced with the term "Officer" to reflect the new restricted application of § 24.16, as amended by the COPRA provisions of the 1993 Act. This change is made to make the provisions of paragraph (c) more harmonious with the rest of the provisions in § 24.16.

§ 24.16(e) Overtime pay.

In paragraph (2)(i) of § 24.16(e), the second sentence regarding the rounding off of overtime work performed in increments other than a full quarter hour is deleted because it seeks to address a problem that is subject to negotiations under the terms of the Civil Service Reform Act.

In paragraph (2)(ii) of § 24.16(e), the last sentence is revised by deleting the words "for the work assignment" after "reports" and adding the words "as assigned" to make it clear that overtime pay is now restricted to hours assigned and worked.

§ 24.16(f) Commute compensation.

In paragraph (3) of § 24.16(f), the last sentence regarding the treatment of certain overtime work to prevent the inappropriate payment of commute compensation is deleted because it represents a regulatory attempt to correct a scheduling issue. The district director is responsible for and has discretion in scheduling appropriate overtime assignments.

In paragraph (4) of § 24.16(f), a stylistic change is made in the first sentence (changing the reference from "he" to "the officer") and a modi-

fication is made in the second sentence (allowing less than all overtime assignments to be treated as one continuous callback assignment) to give management more flexibility in the assignment of overtime work.

§ 24.16(g) Premium pay differentials.

For the reasons given above concerning recasting three provisions in § 24.16(b) because the terms defined encompassed similar elements pertaining to compensation, the three provisions in § 24.16(g) pertaining to premium pay—paragraphs(g)(1) (Holiday differential), (g)(2) (Sunday differential), and (g)(3) (Night work differential)—are recast to employ a parallel construction for ease of readability and to add clarity to their exclusive meanings.

In paragraph (1)(iv) of § 24.16(g), the first sentence is revised and a second sentence is added to make it clear that where only one assigned shift is worked and any of those hours occur during the 24-hour calendar day of a holiday, the entire shift will be designated as a holiday and compensated at the holiday rate of pay. Also, a new paragraph (vi) is added to clarify the compensation computation where only a portion of a regularly-scheduled, non-overtime, holiday shift is worked.

§ 134.55 Compensation of Customs Officers and employees.

In paragraphs (b)(1) and (2) of § 134.55, a grammatical change is made to clarify which regulatory provisions (COPRA or FEPA) are applicable to provide compensation for which Customs personnel. The change provides that the COPRA compensation provisions of § 24.16 are applicable regarding overtime compensation and premium pay for Customs Officers, and that the FEPA compensation provisions of § 24.17 are applicable regarding overtime compensation for other Customs employees.

CONCLUSION

In consideration of the comments received, Customs believes that the interim Pay Reform for Customs Inspectional Services regulations, published as T.D. 94–2 in the Federal Register on December 28, 1993 (58 FR 68520), should be adopted as a final rule with certain changes thereto, as discussed above and set forth below.

THE REGULATORY FLEXIBILITY ACT, AND EXECUTIVE ORDER 12866

Based on the supplementary information set forth above and because the amendments contained in this document reflect existing statutory requirements or merely implement interpretations and policies that are already in effect under interim regulations, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

DRAFTING INFORMATION

The principal author of this document was Gregory R. Vilders, Regulations Branch. However, personnel from other offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 4

Cargo vessels, Customs duties and inspection, Fishing vessels, Harbors, Imports, Maritime carriers, Merchandise, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Wages.

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Customs duties and inspection, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 123

Administrative practice and procedure, Aircraft, Bonds, Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 134

Country of origin, Customs duties and inspection, Labeling, Marking, Packaging and containers.

AMENDMENTS TO THE REGULATIONS

For the reasons stated above, the interim rule amending parts 4, 24, 122, 123, and 134 of the Customs Regulations (19 CFR parts 4, 24, 122, 123, and 134), which was published at 58 FR 68520–68526 on December 28, 1993 (T.D. 94–2), is adopted as a final rule with the following changes:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 261, 267, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1450, 1624; 31 U.S.C. 9701, unless otherwise noted.

2. In § 24.16:

a. Paragraph (b)(14) is removed, and paragraphs (b)(15) and (16) are redesignated paragraphs (b)(14) and (15) respectively;

b. Paragraphs (b)(5) and (13), and newly designated paragraph (b)(14) are revised;

c. The first two sentences in paragraph (c)(1), the first sentence in paragraph (c)(2), and paragraph (c)(3) are revised;

d. Paragraph (d) is amended by removing paragraph (d)(2), redesignating paragraph (d)(3) as paragraph (d)(2), and by adding a new paragraph (d)(3);

e. Paragraph (e) is amended by removing the second sentence in paragraph (e)(2)(i), and by revising paragraph (e)(2)(ii);

f. Paragraph (f) is amended by removing the last sentence in paragraph (f)(3), and by revising paragraph (f)(4);

g. Paragraph (g) is amended by revising the last sentence in the introductory text, revising the introductory text of paragraph (g)(1), revising paragraph (g)(1)(iv), adding a new paragraph (g)(1)(vi), revising paragraph (g)(2), and revising the introductory text of paragraph (g)(3).

The revisions and additions to read as follows:

§ 24.16 Overtime services; overtime compensation and premium pay for Customs officers; rate of compensation.

* * * * * * *

(b) * * *

(5) "Commute compensation" means the compensation which a Customs Officer is entitled to receive, in excess of the officer's base pay, for returning to work, under certain conditions, to perform an overtime work assignment. Commute compensation, within the limits prescribed by the Act, shall be treated as overtime compensation, and is includable for Federal retirement benefit purposes.

* * * * * * *

(13) "Overtime pay" means the compensation which a Customs Officer is entitled to receive, in excess of the officer's base pay, for performing officially-assigned work in excess of the 40 hours of the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day, which may include commute compensation as defined at paragraph (b)(5) of this section. Overtime pay, within the limits prescribed by the Act, is includable for Federal retirement benefit purposes.

(14) "Premium pay differential" means the compensation which a Customs Officer is entitled to receive, in excess of the officer's base pay, for performing officially-assigned work on holidays, Sundays and at night. Premium pay is not includable for Federal retirement benefit purposes.

* * * * * * *

(c) *Application and bond.* (1) Except as provided for in paragraphs (c)(2) and (4) of this section, an application for inspectional services of Customs Officers at night or on a Sunday or holiday, Customs Form 3171, supported by the required cash deposit or bond, shall be filed in the office of the district director of Customs before the assignment of such officers for reimbursable overtime services. The cash deposit to secure reimbursement shall be fixed by the district director or autho-

rized representative in an amount sufficient to pay the maximum probable compensation and expenses of the Customs Officers, or the maximum amount which may be charged by law, whichever is less, in connection with the particular services requested * * *.

(2) Prior to the expected arrival of a pleasure vessel or private aircraft the district director of Customs may designate a Customs Officer to proceed to the place of expected arrival to receive an application for night, Sunday, or holiday services in connection with the arrival of such vessel or aircraft, together with the required cash deposit or bond * * *.

(3) An application on Customs Form 3171 for overtime services of Customs Officers, when supported by the required cash deposit or a continuous bond, may be granted for a period not longer than for 1 year. In such a case, the application must show the exact times when the overtime services will be needed, unless arrangements are made so that the proper Customs Officer will be notified timely during official hours in advance of the services requested as to the exact times that the services will be needed.

* * * * * * *

(d) * * *

(3) *Annuity integrity.* For Customs Officers within 3 years of their statutory retirement eligibility, the amount of overtime that can be worked is limited to the average yearly number of overtime hours the Customs Officer worked during his/her career with the Customs Service. If the dollar value of the average yearly number of overtime hours worked by such Customs Officer exceeds 50 percent of the applicable statutory pay cap, then no overtime earning limitation based on this annuity integrity provision would apply. Waivers concerning this annuity integrity limitation may be granted by the Commissioner of Customs or the Commissioner's designee in individual cases in order to prevent excessive costs or to meet emergency requirements of Customs.

(e) * * *

(2) * * *

(ii) *Absence during overtime.* Except as expressly authorized by statute, regulation, or court order (i.e., military leave, court leave, continuation of pay under the workers compensation law, and back pay awards), a Customs Officer shall be paid for overtime work only when the officer reports as assigned.

(f) * * *

(4) *Maximum Compensation for Multiple Assignments.* If a Customs Officer is assigned to perform more than one overtime assignment, in which the officer is required to return to a place of work more than once in order to complete the assignment, and otherwise satisfies the call-back requirements of paragraph (f)(1) of this section, then the officer shall be entitled to commute compensation each time the officer returns to the place of work provided that each assignment commences less than 16 hours after the officer's last regularly-scheduled work assignment.

However, in no case shall the compensation be greater than if some or all of the assignments were treated as one continuous callback assignment.

(g) *Premium pay differentials.* * * * The order of precedence for the payment of premium pay differentials is holiday, Sunday, and night work.

(1) *Holiday differential.* A Customs Officer who performs any regularly-scheduled work on a holiday shall receive pay for that work at the officer's hourly rate of base pay, which includes authorized locality pay, plus premium pay amounting to 100 percent of that base rate. Holiday differential premium pay will be paid only for time worked. Intermittent employees are not entitled to holiday differentials.

* * * * * * *

(iv) If a Customs Officer is assigned to a regularly-scheduled, non-overtime, tour of duty which contains hours within and outside the 24-hour calendar day of a holiday—for example, a tour of duty starting at 8 p.m. on a Monday holiday following a scheduled day off on Sunday and ending at 4 a.m. on Tuesday—the Customs Officer shall receive the holiday differential (up to 8 hours) for work performed during that shift. If the Customs Officer is assigned more than one regularly-scheduled, non-overtime, tour of duty which contains hours within and outside the 24-hour calendar day of a holiday—for example, a tour of duty starting at 8 p.m. on the Wednesday before a Thursday holiday and ending at 4 a.m. on Thursday with another regularly-scheduled, non-overtime, tour of duty starting at 8 p.m. on the Thursday holiday and ending at 4 a.m. on Friday—the management official in charge of assigning work shall designate one of the tours of duty as the officer's holiday shift and the officer shall receive holiday differential (up to 8 hours) for work performed during the entire period of the designated holiday shift. The Customs Officer shall not receive holiday differential for any of the work performed on the tour of duty which has not been designated as the holiday shift but will be eligible for Sunday or night differential as appropriate.

* * * * * * *

(vi) A Customs Officer who works only a portion of a regularly-scheduled, non-overtime, holiday shift will be paid the holiday differential for the actual hours worked and the appropriate differential (Sunday or night) for the remaining portion of the shift such officer was not required to work. The night differential premium pay shall be calculated based on the rate applicable to the entire shift.

(2) *Sunday differential.* A Customs Officer who performs any regularly-scheduled work on a Sunday that is not a Federal holiday shall receive pay for that work at the officer's hourly rate of base pay, which includes authorized locality pay, plus premium pay amounting to 50 percent of that base rate. Sunday differential premium pay will be paid only for time worked and is not applicable to overtime work performed on a Sunday. A Customs Officer whose regularly-scheduled work occurs in part on a Sunday, that is not a Federal holiday, and in part on the preced-

ing or following day, will receive the Sunday differential premium pay for the hours worked between 12:01 a.m. and 12 Midnight on Sunday. Intermittent employees are not entitled to Sunday differentials.

(3) *Night work differentials.* A Customs Officer who performs any regularly-scheduled night work shall receive pay for that work at the officer's hourly rate of base pay, including locality pay as authorized, plus the applicable premium pay differential, as specified below, but shall not receive such night differential for work performed during overtime assignments. When all or the majority of the hours of a Customs Officer's regularly-scheduled work occur between 3 p.m. and 8 a.m., the officer shall receive a night differential premium for all the hours worked during that assignment. Intermittent employees are not entitled to night differentials.

* * * * * * *

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1304, 1624.

2. In § 134.55, paragraph (b) is revised to read as follows:

§ 134.55 Compensation of Customs Officers and employees.

* * * * * * *

(b) *Applicability*—(1) *Official hours.* The compensation of Customs Officers or employees assigned to supervise the exportation, destruction, or marking of articles so as to exempt them from the application of marking duties shall be computed in accordance with the provisions of §§ 24.16 or 24.17(a)(3), respectively, of this chapter when such supervision is performed during a regularly-scheduled tour of duty.

(2) *Overtime.* When such supervision is performed by a Customs Officer or employee in an overtime status, the compensation with respect to the overtime shall be computed in accordance with the provisions of § 24.16 or § 24.17, respectively, of this chapter.

* * * * * * *

GEORGE J. WEISE,
Commissioner of Customs.

Approved: August 12, 1994.
JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury,

[Published in the Federal Register, September 12, 1994 (59 FR 46752)]

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., September 6, 1994.

The following documents of the United States Customs Service, Office of Commercial Operations, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

MODIFICATION AND REVOCATION OF CUSTOMS RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF BUBBLE AND WATER GUN TOYS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification and revocation of tariff classification ruling letters.

SUMMARY: Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), this notice advises interested parties that Customs is modifying or revoking seven ruling letters concerning the tariff classification of bubble and water gun toys. Notice of the proposed modification and revocation was published July 27, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 30.

EFFECTIVE DATE: These decisions are effective for merchandise entered, or withdrawn from warehouse, for consumption on or after November 21, 1994.

FOR FURTHER INFORMATION CONTACT: Lenny Feldman, Food and Chemicals Classification Branch, Office of Regulations and Rulings (202) 482–7020.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 27, 1994, Customs published a notice in the CUSTOMS BULLETIN, Volume 28, Number 30, proposing to modify or revoke the following Headquarters Ruling Letters (HRLs) issued by the Director, Commercial Rulings Division, Office of Regulations and Rulings and New York Ruling Letters (NYRLs) issued by the Area Director of Customs, New York Seaport:

(a) HRL 950941, dated July 22, 1992,
(b) HRL 089523, dated January 6, 1992,
(c) NYRL 863525, dated June 14, 1991,
(d) NYRL 863507, dated June 13, 1991,
(e) NYRL 861617, dated March 29, 1991, and
(f) NYRL 855676, dated September 7, 1990

wherein toy bubble necklaces comprised of plastic bottles filled with bubble solution and accompanied by a wand, attached to a textile cord, were classified in subheading 7117.90.5000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The notice also proposed to modify NYRL 868343, dated November 15, 1991, wherein a toy water gun necklace comprised of a plastic water gun attached to a textile cord was classified in subheading 7117.90.5000, HTSUSA. No comments were received concerning the matter.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), this notice advises interested parties that Customs is modifying or revoking HRLs 950941 and 089523 as well as NYRLs 863525, 863507, 861617, 855676, and 868343. Accordingly, Customs is issuing ruling letters to reflect proper classification of the merchandise in subheading 9503.90.60, HTSUSA, which provides for toys, other, other, other toys, not having a spring mechanism. The rulings modifying or revoking these decisions are set forth in Attachments A, B, C, D, E, F, and G to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: August 31, 1994.

JOHN G. BLACK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., August 31, 1994.

CLA–2 CO:R:C:F 956160 LPF
Category: Classification
Tariff No. 9503.90.6000

MR. ROBERT P. RAIT
12 West 37th Street
New York, NY 10018

Re: Classification of bear bubble bottles suspended on textile cords; Revocation of HRL 950941; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRL 953102.

DEAR MR. RAIT:

In Headquarters Ruling Letter (HRL) 950941, issued July 22, 1992, a bear bubble bottle, imported from Taiwan, was classified in subheading 7117.90.5000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts. We have reviewed that ruling and have found it to be in error. The correct classification is as follows.

Facts:

The article at issue is a bubble bottle, resembling a bear, made of translucent, pink colored plastic, attached to an orange textile cord allowing the article to be worn around the neck. The bottle is approximately 2¾ inches in height, from the top of the pink cap to the bottom paws, and is filled with bubble solution. A plastic wand for blowing bubbles is attached to the inside of the bottle's cap. The bottle is attached to the cord by a removable plastic "C" clasp around the neck of the bottle. It is our understanding that the bottles are available in shapes other than bears, such as hearts or seashells. pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed revocation of HRL 950941 was published on July 27, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 30.

Issue:

Whether the bear bubble bottle with bubble solution and a wand is classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The subject article potentially is classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that the article, consisting of a bottle with bubble solution, is a toy. The bubble solution is a plaything which a child repeatedly will take off their neck for the purpose of blowing bubbles. Even if worn around the neck, it is apparent the child principally will use the article to blow bubbles. It is likely that once the supply of bubble solution has been depleted, the novelty and purpose of this article will cease to exist and, as a result, the

child will discard the empty plastic bottle and textile cord. Accordingly, the article is designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc. The subject article does not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a)(1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." This article, in its entirety, is not a necklace because it is not worn around the neck as an ornament. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The bottle and bubble solution is not a pendant because it is not an ornamental article or piece of jewelry attached to a necklace. The subject article, simply, is not worn for adornment.

This decision is in accord with HRL 953102, issued April 26, 1993, where plastic bottles designed as penguins, hearts, and bear cubs containing bubble solution and a wand for blowing bubbles, suspended on textile cords, were classified as toys. Similarly, in the instant case, the child-consumer would not intend to wear the plastic bottle and bubble solution as an article of ornamentation, but rather intend to play with the merchandise for the purpose of amusement. The textile cord is not principally designed to enable one to wear the bottle and bubble solution, but primarily allows one to handle and carry the bottle and bubble solution in order to repeatedly blow bubbles. The textile cord is similar to the carrying or wearing straps of a camera or pair of binoculars which do not affect the function of the merchandise. Accordingly, the subject article principally is used for amusement and is classified, pursuant to GRI 1, within heading 9503 as other toys. Although the article is designed in an animal motif, in its entirety, it is not accurately described as a "toy representing an animal," because of the inclusion of the bubble solution and wand. Instead, it is classifiable, pursuant to GRI 1 in accordance with GRI 6, as an "other" toy in subheading 9503.90.60, the appropriate provision for bubble solution and its accoutrements.

Holding:

The bear bubble bottle suspended on a textile cord is classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*.

HRL 950941 hereby is revoked.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN G. BLACK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., August 31, 1994.

CLA–2 CO:R:C:F 956561 LPF
Category: Classification
Tariff No. 9503.90.6000

NED H. MARSHAK, ESQ.
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
67 Broad Street
New York, NY 10004

Re: Classification of twin pack bubble pendant; Revocation of HRL 089523; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRL 953102.

DEAR MR. MARSHAK:

In Headquarters Ruling Letter (HRL) 089523, issued January 6, 1992, on behalf of your client Kmart Corporation, a twin pack bubble pendant imported from. Taiwan was classified in subheading 7117.90.5000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts. We have reviewed that ruling and have found it to be in error. The correct classification is as follows

Facts:

The twin pack bubble pendant consists of two bubble pendant necklaces in blister packaging. Each bubble pendant necklace includes an oval shaped, 2½ inch by 2 inch bottle, filled with bubble solution. It is our understanding that the bottles are made of plastic. A plastic wand for blowing bubbles is attached to the inside of the bottle's cap. The bottles are attached to a textile cord by a removable plastic "C" clasp around the neck of the bottle. pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed revocation of HRL 089523 was published on July 27, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 30.

Issue:

Whether the twin pack bubble pendant is classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The subject article potentially is classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that the article, consisting of a bottle with bubble solution, is a toy. The bubble solution is a plaything which a child repeatedly will take off their neck for the purpose of blowing bubbles. Even if worn around the neck, it is apparent the child principally will use the article to blow bubbles. It is likely that once the supply of bubble solution has been depleted, the novelty and purpose of this article will cease to exist and, as a result, the child will discard the empty plastic bottle and textile cord. Accordingly, the article is designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc. The subject article does not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a)(1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." This article, in its entirety, is not a necklace because it is not worn around the neck as an ornament. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The bottle and bubble solution is not a pendant because it is not an ornamental article or piece of jewelry attached to a necklace. The subject article, simply, is not worn for adornment.

This decision is in accord with HRL 953102, issued April 26, 1993, where plastic bottles designed as penguins, hearts, and bear cubs containing bubble solution and a wand for blowing bubbles, suspended on textile cords, were classified as toys. Similarly, in the instant case, the child-consumer would not intend to wear the plastic bottle and bubble solution as an article of ornamentation, but rather intend to play with the merchandise for the purpose of amusement. The textile cord is not principally designed to enable one to wear the bottle and bubble solution, but primarily allows one to handle and carry the bottle and bubble solution in order to repeatedly blow bubbles. The textile cord is similar to the carrying or wearing straps of a camera or pair of binoculars which do not affect the function of the merchandise. Accordingly, the subject article principally is used for amusement and is classified, pursuant to GRI 1, within heading 9503 as other toys. The appropriate subheading is 9503.90.6000.

Holding:

The twin pack bubble pendant is classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*.

HRL 089523 hereby is revoked.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN G. BLACK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., August 31, 1994.

CLA–2 CO:R:C:F 956562 LPF
Category: Classification
Tariff No. 9503.90.6000

MS. MONA WEBSTER
CUSTOMS IMPORT SPECIALIST
TARGET STORES
Import Department CC–08G
P.O. Box 1392
Minneapolis, MN 55440

Re: Classification of bubble necklace; Modification of NYRL 863525; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRL 953102.

DEAR MS. WEBSTER:

In New York Ruling Letter (NYRL) 863525, issued June 14, 1991, a Fun Pack (style #4717) consisting of a ponytail holder, textile bracelet, stick on plastic earrings, vinyl

child's carrying bag, and a bubble necklace was classified under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The bubble necklace was classified in subheading 7117.90.5000, HTSUSA, as imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts. We have reviewed that ruling and have found it to be partially in error. Although the other articles were properly classified, the correct classification of the bubble necklace is as follows.

Facts:

The article at issue, imported from Taiwan, is a bubble necklace comprised of a plastic bottle and cap with bubble solution. Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of NYRL 863525 was published on July 27, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 30.

Issue:

Whether the bubble necklace is classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The subject article potentially is classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that the article, consisting of a bottle with bubble solution, is a toy. The bubble solution is a plaything which a child repeatedly will take off their neck for the purpose of blowing bubbles. Even if worn around the neck, it is apparent the child principally will use the article to blow bubbles. It is likely that once the supply of bubble solution has been depleted, the novelty and purpose of this article will cease to exist and, as a result, the child will discard the empty plastic bottle and its accoutrements. Accordingly, the article is designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc. The subject article does not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a)(1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." This article, in its entirety, is not a necklace because it is not worn around the neck as an ornament. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The bottle and bubble solution is not a pendant because it is not an ornamental article or piece of jewelry attached to a necklace. The subject article, simply, is not worn for adornment.

This decision is in accord with Headquarters Ruling Letter 953102, issued April 26, 1993, where plastic bottles designed as penguins, hearts, and bear cubs containing bubble solution and a wand for blowing bubbles, suspended on textile cords, were classified as toys. Similarly, in the instant case, the child-consumer would not intend to wear the plastic bottle and bubble solution as an article of ornamentation, but rather intend to play with the merchandise for the purpose of amusement. The fact that the article may be worn around the neck does not mean that it principally is designed to enable one to wear the

bottle and bubble solution. Instead, the article is designed primarily to allow one to handle and carry the bottle and bubble solution in order to repeatedly blow bubbles. Similarly, the carrying or wearing straps of a camera or pair of binoculars do not affect the function of the merchandise nor change its classification for tariff purposes. Accordingly, the subject article principally is used for amusement and is classified, pursuant to GRI 1, within heading 9503 as other toys. The appropriate subheading is 9503.90.6000.

Holding:

The bubble necklace is classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*. The other articles comprising the Fun Pack remain classified as held in NYRL 863525.

NYRL 863525 hereby is modified accordingly.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN G. BLACK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., August 31, 1994.

CLA–2 CO:R:C:F 956563 LPF
Category: Classification
Tariff No. 9503.90.6000

MS. MONA WEBSTER
CUSTOMS IMPORT SPECIALIST
TARGET STORES
Import Department CC–08G
P.O. Box 1392
Minneapolis, MN 55440

Re: Classification of bubble necklace; Modification of NYRL 863507; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRL 953102.

DEAR MS. WEBSTER:

In New York Ruling Letter (NYRL) 863507, issued June 13, 1991, a Fun Pack (style #4710) consisting of a ponytail holder, shoe laces, child's handbag, and a bubble necklace were classified under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The bubble necklace was classified in subheading 7117.90.5000, HTSUSA, as imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts. We have reviewed that ruling and have found it to be partially in error. Although the other articles were properly classified, the correct classification of the bubble necklace is as follows.

Facts:

The article at issue, imported from Taiwan, is a bubble necklace. It is our understanding that the article is comprised of a plastic bottle and cap with bubble solution. Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of NYRL 863507 was published on July 27, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 30.

Issue:

Whether the bubble necklace is classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The subject article potentially is classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that the article, consisting of a bottle with bubble solution, is a toy. The bubble solution is a plaything which a child repeatedly will take off their neck for the purpose of blowing bubbles. Even if worn around the neck, it is apparent the child principally will use the article to blow bubbles. It is likely that once the supply of bubble solution has been depleted, the novelty and purpose of this article will cease to exist and, as a result, the child will discard the empty plastic bottle and its accoutrements. Accordingly, the article is designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc. The subject article does not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a)(1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." This article, in its entirety, is not a necklace because it is not worn around the neck as an ornament. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The bottle and bubble solution is not a pendant because it is not an ornamental article or piece of jewelry attached to a necklace. The subject article, simply, is not worn for adornment.

This decision is in accord with Headquarters Ruling Letter 953102, issued April 26, 1993, where plastic bottles designed as penguins, hearts, and bear cubs containing bubble solution and a wand for blowing bubbles, suspended on textile cords, were classified as toys. Similarly, in the instant case, the child-consumer would not intend to wear the plastic bottle and bubble solution as an article of ornamentation, but rather intend to play with the merchandise for the purpose of amusement. The fact that the article may be worn around the neck does not mean that it principally is designed to enable one to wear the bottle and bubble solution. Instead, the article is designed primarily to allow one to handle and carry the bottle and bubble solution in order to repeatedly blow bubbles. Similarly, the carrying or wearing straps of a camera or pair of binoculars do not affect the function of the merchandise nor change its classification for tariff purposes. Accordingly, the subject article principally is used for amusement and is classified, pursuant to GRI 1, within heading 9503 as other toys. The appropriate subheading is 9503.90.6000.

Holding:

The bubble necklace is classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*. The other articles comprising the Fun Pack remain classified as held in NYRL 863507.

NYRL 863507 hereby is modified accordingly.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN G. BLACK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., August 31, 1994.

CLA–2 CO:R:C:F 956564 LPF
Category: Classification
Tariff No. 9503.90.6000

MS. DENISE MURRAY
PROCORP, INC.
283 Pleasant Street
Framingham, MA 01701

Re: Classification of bubble necklace; Revocation of NYRL 861617; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRL 953102.

DEAR MS. MURRAY:

In New York Ruling Letter (NYRL) 861617, issued March 29, 1991, a bubble necklace, imported from China, was classified in subheading 7117.90.5000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts. We have reviewed that ruling and have found it to be in error. The correct classification is as follows.

Facts:

The bubble necklace consists of a heart-shaped plastic bottle suspended from a textile neck cord. The plastic bottle contains a non-aromatic solution for blowing bubbles. Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed revocation of NYRL 861617 was published on July 27, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 30.

Issue:

Whether the bubble necklace is classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The subject article potentially is classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpreta-

tion 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that the article, consisting of a bottle with bubble solution, is a toy. The bubble solution is a plaything which a child repeatedly will take off their neck for the purpose of blowing bubbles. Even if worn around the neck, it is apparent the child principally will use the article to blow bubbles. It is likely that once the supply of bubble solution has been depleted, the novelty and purpose of this article will cease to exist and, as a result, the child will discard the empty plastic bottle and textile cord. Accordingly, the article is designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc. The subject article does not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a)(1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." This article, in its entirety, is not a necklace because it is not worn around the neck as an ornament. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The bottle and bubble solution is not a pendant because it is not an ornamental article or piece of jewelry attached to a necklace. The subject article, simply, is not worn for adornment.

This decision is in accord with Headquarters Ruling Letter (HRL) 953102, issued April 26, 1993, where plastic bottles designed as penguins, hearts, and bear cubs containing bubble solution and a wand for blowing bubbles, suspended on textile cords, were classified as toys. Similarly, in the instant case, the child-consumer would not intend to wear the plastic bottle and bubble solution as an article of ornamentation, but rather intend to play with the merchandise for the purpose of amusement. The textile cord is not principally designed to enable one to wear the bottle and bubble solution, but primarily allows one to handle and carry the bottle and bubble solution in order to repeatedly blow bubbles. The textile cord is similar to the carrying or wearing straps of a camera or pair of binoculars which do not affect the function of the merchandise. Accordingly, the subject article principally is used for amusement and is classified, pursuant to GRI 1, within heading 9503 as other toys. The appropriate subheading is 9503.90.6000.

Holding:

The bubble necklace is classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*.

NYRL 861617 hereby is revoked.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN G. BLACK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., August 31, 1994.

CLA–2 CO:R:C:F 956565 LPF
Category: Classification
Tariff No. 9503.90.6000

MS. MARIE C. BIAMONTE
SBA CONSOLIDATORS
175 Rogers Avenue
Inwood, NY 11096

Re: Classification of bubble fun necklace; Revocation of NYRL 855676; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRL 953102.

DEAR MS. BIAMONTE:

In New York Ruling Letter (NYRL) 855676, issued September 7, 1990, a bubble necklace, imported from Taiwan, was classified in subheading 7117.90.5000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts. We have reviewed that ruling and have found it to be in error. The correct classification is as follows.

Facts:

The bubble fun necklace consists of a heart-shaped plastic bottle suspended from a textile neck cord. The plastic bottle contains a non-aromatic solution for blowing bubbles. Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed revocation of NYRL 855676 was published on July 27, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 30.

Issue:

Whether the bubble necklace is classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The subject article potentially is classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that the article, consisting of a bottle with bubble solution, is a toy. The bubble solution is a plaything which a child repeatedly will take off their neck for the purpose of blowing bubbles. Even if worn around the neck, it is apparent the child principally will use the article to blow bubbles. It is likely that once the supply of bubble solution has been depleted, the novelty and purpose of this article will cease to exist and, as a result, the child will discard the empty plastic bottle and textile cord. Accordingly, the article is designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc.

The subject article does not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a)(1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." This article, in its entirety, is not a necklace because it is not worn around the neck as an ornament. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The bottle and bubble solution is not a pendant because it is not an ornamental article or piece of jewelry attached to a necklace. The subject article, simply, is not worn for adornment.

This decision is in accord with Headquarters Ruling Letter (HRL) 953102, issued April 26, 1993, where plastic bottles designed as penguins, hearts, and bear cubs containing bubble solution and a wand for blowing bubbles, suspended on textile cords, were classified as toys. Similarly, in the instant case, the child-consumer would not intend to wear the plastic bottle and bubble solution as an article of ornamentation, but rather intend to play with the merchandise for the purpose of amusement. The textile cord is not principally designed to enable one to wear the bottle and bubble solution, but primarily allows one to handle and carry the bottle and bubble solution in order to repeatedly blow bubbles. The textile cord is similar to the carrying or wearing straps of a camera or pair of binoculars which do not affect the function of the merchandise. Accordingly, the subject article principally is used for amusement and is classified, pursuant to GRI 1, within heading 9503 as other toys. The appropriate subheading is 9503.90.6000.

Holding:

The bubble fun necklace is classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*.

NYRL 855676 hereby is revoked.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN G. BLACK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., August 31, 1994.

CLA–2 CO:R:C:F 956566 LPF
Category: Classification
Tariff No. 9503.90.6000

MR. RON SIAS
J.W. HAMPTON, JR. & CO., INC.
15 Park Row
New York, NY 10038

Re: Classification of plastic water gun suspended on textile cord; Modification of NYRL 868343; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRLs 953102, 952296.

DEAR MR. SIAS:

In New York Ruling Letter (NYRL) 868343, issued November 15, 1991, merchandise known as the "Tropical Club" (item #66217 SG) consisting of a plastic water gun suspended on a textile cord and plastic sunglasses was classified under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The water gun was classified in sub-

heading 7117.90.5000, HTSUSA, as imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts. We have reviewed that ruling and have found it to be partially in error. The correct classification of the water gun is as follows.

Facts:

The article at issue, imported from China, consists of a plastic water gun resembling a seahorse, attached to a textile neck cord. Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of NYRL 868343 was published on July 27, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 30.

Issue:

Whether the water gun suspended on a textile neck cord is classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The subject article potentially is classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that the article, consisting of a water gun, is a toy. The water gun is a plaything which a child repeatedly will take off their neck for the purpose of filling it with water and squirting others. Even if worn around the neck, it is apparent the child principally will use the article to squirt others. Accordingly, the article is designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc. The subject article does not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a)(1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." This article, in its entirety, is not a necklace, because it is not worn around the neck as an ornament. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The water gun is not a pendant because it is not an ornamental article or piece of jewelry attached to a necklace. The subject article, simply, is not worn for adornment.

This decision is in accord with Headquarters Ruling Letters (HRLs) 953102, issued April 26, 1993, and 952296, issued December 15, 1992, where plastic bottles designed as penguins, hearts, and bear cubs containing bubble solution and a wand for blowing bubbles as well as a plastic water gun resembling a fish, both suspended on textile cords, were classified as toys. Similarly, in the instant case, the child-consumer would not intend to wear the water gun as an article of ornamentation, but rather intend to play with the merchandise for the purpose of amusement. The textile cord is not principally designed to enable one to wear the water gun, but primarily allows one to handle and carry the water gun in order to repeatedly fill it with water and squirt others. The textile cord is similar to the carrying or wearing straps of a camera or pair of binoculars which do not affect the function of the merchandise. Accordingly, the subject article principally is used for amusement and is classified, pursuant to GRI 1, within heading 9503 as other toys. Although the

article is designed in an animal motif, in its entirety, it is not accurately described as a "toy representing an animal," because of the inclusion of the water gun. Instead, it is classifiable, pursuant to GRI 1 in accordance with GRI 6, as an "other" toy in subheading 9503.90.60, the appropriate provision for water guns and their accoutrements.

Holding:

The water gun suspended on a textile cord is classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*. The other article comprising the "Tropical Club" remains classified as held in NYRL 868343.

NYRL 868343 is modified accordingly.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN G. BLACK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF A CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF PAPERBOARD COASTERS

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of paperboard coasters.

DATE: Comments must be received on or before October 21, 1994.

ADDRESS: Written comments (in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Bill Conrad, Textile Classification Branch (202–482–7050).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the

North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of paperboard coasters.

In New York Ruling Letter (NYRL) 867163, issued September 30, 1991, by the Area Director of Customs, New York Seaport, the paperboard coasters were classified in subheading 4818.90.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for other sanitary articles of paper. (See ruling letter at "Attachment A" to this document.)

Upon review of NYRL 867163, the Area Director has recommended its reconsideration by Customs Headquarters. Customs Headquarters is of the view that the paperboard coasters should be classified in subheading 4823.60.0040, HTSUSA.

Customs intends to revoke NYRL 867163 to reflect proper classification of the article, as above. Before taking this action, consideration will be given to any written comments timely received. The proposed Headquarters ruling letter modifying NYRL 867163 is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: September 2, 1994.

PHILIP L. ROBINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, N.Y., September 30, 1991.

CLA–2–48:S:N1:234 867163
Category: Classification
Tariff No. 4818.90.0000

MR. DALE G. VANDER YACHT
BORDER BROKERAGE COMPANY
P.O. Box B
Blaine, Washington, 98230

Re: The tariff classification of paper coasters from Canada.

DEAR MR. VANDER YACHT:

In your letter dated Sept. 16, 1991, on behalf of your client, Pacific Paper Products, Ltd., you requested a tariff classification ruling.

Samples were submitted, which will be retained for reference. They are conventional rectangular or oval paper or paperboard coasters, each printed with an advertisement of a

particular brand of beer. The coasters are used to protect the surface of a table or bar from spill or condensation of moisture from a glass containing beer or other beverage. They vary slightly in size, one from another, but all are contained within the dimensions: 4¼ inches × 4 inches.

The applicable subheading for the coasters will be 4818.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provided for: Other (than certain enumerated) sanitary articles of paper or paperboard. The rate of duty will be 3 percent *ad valorem*.

Goods classifiable under subheading 4818.90.0000, HTS, which have originated in the territory of Canada, will be entitled to a 1.2 percent *ad valorem* rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

You advise that the coasters will be sold to breweries in the United States in packages of 100 or 1000, which (packages) will be marked "Printed in Canada". The breweries will then distribute them for ultimate use in retail establishments. You ask if this will be considered legal marking.

On the reasonable assumption that the packages will be distributed intact to retail establishments, and that these are to be considered to be the "ultimate purchasers in the United States" for purposed of the marking statute, it is our opinion that such marking of packages, if sufficiently legible and in a conspicuous place, would constitute legal marking.

This ruling is being issued under the provisions of Section 177 of the customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. if the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:T 956238 BC
Category: Classification
Tariff No. 4823.60.0040

DALE G. VANDER YACHT
BORDER BROKERAGE COMPANY
P.O. Box xxx
Blaine, WA 98230

Re: Revocation of NYRL 867163; classification of beverage coasters made of paperboard, not of paper.

DEAR MR. VANDER YACHT:

Recently, it has come to our attention that New York Ruling Letter (NYRL) 867163, issued to you on September 30, 1991, on behalf of Pacific Paper Products, Ltd., was issued in error. The ruling classified beverage coasters. As explained below, the ruling should be revoked.

Facts:

The merchandise at issue was described in NYRL 867163 as "conventional rectangular or oval paper or paperboard coasters, each printed with an advertisement of a particular brand of beer. The coasters are used to protect the surface of a table or bar from spill * * * from a glass containing beer or other beverage. They vary slightly in size * * * within the [following] dimensions: 4¼ inches × 4 inches." The ruling classified them in subheading 4818.90.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA),

which the ruling stated to provide for: "Other (than certain enumerated) sanitary articles of paper or paperboard."

Now, we understand the subject coasters to be made of paperboard, not paper. Given this fact, the Area Director of Customs, New York Seaport, reviewed NYRL 867163 and determined that it was issued in error, since subheading 4818.90.0000, HTSUSA, provides for such articles made of paper, not of paperboard. The Area Director recommended that the ruling be reconsidered, suggesting classification in subheading 4823.60.0040, HTSUSA, which provides for other articles of paper or paperboard: trays, dishes, plates, cups, and the like, of paper or paperboard.

Issue:

What is the proper classification for the subject beverage coasters made of paperboard?

Law and Analysis:

The dictionary defines "coaster" as follows: "4. A disk placed under a bottle, pitcher, or drinking glass to protect the surface below." (See Webster's II New Riverside University Dictionary, p.275 (1984).) It is common knowledge that coasters are not made of paper, since paper does not provide the absorbability of paperboard or cork, two common materials used for coasters. We understand the coasters at issue to be made of paperboard, not of paper. Thus, use of the term "paper or paperboard" in NYRL 867163 is inaccurate.

As above, subheading 4818.90.0000, HTSUSA, provides for articles made of paper. Since the coasters at issue are not made of paper, they are not classifiable in that subheading. We believe that the coasters are classifiable in subheading 4823.60.0040, HTSUSA, which, as stated, provides for other articles of paperboard, trays, dishes, plates, cups, and the like of paperboard. Since coasters are used within the realm of articles employed in the service of food and beverages, we believe they are like the articles mentioned in the subheading.

Holding:

The paperboard beverage coasters at issue are classifiable in subheading 4823.60.0040, HTSUSA. Accordingly, NYRL 867163, issued on September 30, 1991, is hereby revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF "ANGEL FLEECE" MADE OF COPPER, BRASS COVERED COPPER AND FIBERGLASS STRANDS

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1) of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of strands of copper wire, brass covered copper wire and fiberglass, known as "Angel Fleece". These articles are decorating accessories in the tradition of spun glass wool or "angel hair". Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before October 21, 1994.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1301 Constitution Avenue, N.W. (Franklin Court), Washington D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington D.C.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, Metals and Machinery Classification Branch (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1) of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of strands of copper wire, brass covered copper wire and fiberglass, known as "Angel Fleece". Comments are invited on the correctness of the proposed ruling.

In New York Ruling Letter (NYRL) 893043, dated December 16, 1993, strands of copper wire, brass covered copper wire and fiberglass, known as "Angel Fleece" were held to be classifiable under subheadings 7419.99.50 and 7019.10.40, Harmonized Tariff Schedule of the United States (HTSUS), which provide, respectively for table, kitchen and other articles of copper and glass fibers (including glass wool) and articles thereof (for example, yarn, woven fabrics): slivers, rovings, yarn and chopped strands: rovings. NYRL 893043 is set forth as "Attachment A" to this document.

It is Customs position that "Angel Fleece" does not meet the criteria for **festive articles**. None of it is traditionally associated with a particular festival, but instead it may be used at parties and various events throughout the year. "Angel Fleece" is not *ejusdem generis* with those articles cited in EN 95.05 as exemplars of traditional, festive articles. *See, inter alia,* HRLs 952833, dated February 6, 1993 and 951394, dated December 2, 1992. However, application of GRI 1, the terms of the heading and the ENs all indicate that "Angel Fleece" is classifiable as an **entertainment article** of heading 9505, HTSUS.

Subheading 9505.90.40, HTSUS, provides for confetti, paper spirals or streamers, party favors and noisemakers. Subheading 9505.90.60, HTSUS, provides for other festive, carnival or entertainment articles. Classification at the eight digit level depends upon whether the language in the subheadings and ENs indicates that "Angel Fleece" fits the description of non-durable entertainment or party-type articles. Because the article decorates winter scenes as artificial snow, manger scenes as hay, or holiday bags, Customs believes that "Angel Fleece" is a non-durable entertainment article. Therefore, the subject article is classifiable under subheading 9505.90.40, HTSUS, which provides for fes-

tive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: other: confetti, paper spirals or streamers, party favors and noisemakers; parts and accessories thereof.

For a similar analysis see HRL 953817, dated July 14, 1993, which classified a textile spider web as an entertainment article under the same subheading.

Customs intends to revoke NYRL 893043 to reflect the proper classification of "Angel Fleece" under this subheading. Before taking this action, consideration will be given to any written comments timely received. Proposed Headquarters Ruling Letter (HRL) 956324 revoking NYRL 893043 is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: August 30, 1994.

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, N.Y., December 16, 1993.

CLA–2–74:S:N:N3:115 893043
Category: Classification
Tariff No. 7419.99.5050 and 7019.10.4080

MS. ROSALIE ALTHOFF
MIDWEST IMPORTERS OF CANNON FALLS, INC.
P.O. Box 20
Highway 52 South
Cannon Falls, MN 55009–0020

Re: The tariff classification of angel fleece from Germany.

DEAR MS. AITHOFF:

In your letter dated December 1, 1993, you requested a tariff classification ruling.

The subject items are described as follows:

Item 1: 11443–8 Gold Angel Fleece—made of strands of copper wire covered with brass.
Item 2: 11446–9 White Angel Fleece—made of fiberglass strands.
Item 3: 11445–2 Copper Angel Fleece—made of copper strands.

These items will be presented in a holiday catalog to be sold and used as Christmas time decorating accessories in the tradition of spun glass wool or "angel hair".

The fiberglass Angel Fleece are grouped continuous filaments of glass, substantially parallel and untwisted.

The applicable subheading for the Gold Angel Fleece and the Copper Angel Fleece will be 7419.99.5050, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of copper: other: other. The duty rate will be 5% *ad valorem*.

The applicable subheading for the White Angel Fleece will be 7019.10.4080, Harmonized Tariff Schedule of the United States (HTS), which provides for glass fibers (including glass wool) and articles thereof (for example, yarn, woven fabrics): rovings: other. The duty rate will be 6% *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:M 956324 MMC
Category: Classification
Tariff No. 9505.90.40

MS. BRENDA MYRAN
CUSTOMS COORDINATOR
MIDWEST IMPORTERS OF CANNON FALLS, INC.
P.O. Box 20
Highway 52 South
Cannon Falls, MN 55009–0020

Re: Copper wire, brass covered copper wire and fiberglass strands; "Angel Fleece"; NYRL 893043; EN 95.05; HRLs 952833, 951394, 953817.

DEAR MS. MYRAN:

This is in reference to your letter of April 21, 1994, requesting reconsideration of New York Ruling Letter (NYRL) 893043 dated December 16, 1993, in which you were advised of the classification of copper wire, brass covered copper wire and fiberglass strands known as "Angel Fleece" under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The subject articles are described as "Gold Angel Fleece", "Copper Angel Fleece" and "White Angel Fleece". The Gold Angel Fleece is made of brass covered copper wire strands. The Copper Angel Fleece is made of copper wire strands. The White Angel Fleece is made of fiberglass strands.

The sample package of White Angel Fleece submitted contains the following statements: "Lovely in holiday displays. Beautiful filler for gift bags and baskets. Gently separate and fluff for extra volume." Additionally, you state that the articles are marketed and used as a Christmas time decorating accessory in the tradition of spun glass wool or "angel hair", likewise suitable for "snow" appearance.

In NYRL 893043 the articles were held to be classifiable under subheadings 7419.99.50 and 7019.10.40, HTSUS, which provide, respectively, for table, kitchen and other articles of copper and glass fibers (including glass wool) and articles thereof (for example, yarn, woven fabrics): slivers, rovings, yarn and chopped strands: rovings. You contend that they are more specifically classifiable as festive articles.

Issue:

Whether "Angel Fleece" is classifiable as a festive article, an entertainment article or as other articles of copper and articles of glass fibers under the HTSUS.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1, HTSUS, states in part that for legal purposes, clas-

sification shall be determined according to the terms of the headings and any relative section or chapter notes.

The headings under consideration are as follows:

7419	table, kitchen and other articles of copper
7019	glass fibers (including glass wool) and articles thereof (for example, yarn, woven fabrics)
9505	festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be consulted. The ENs, although not dispositive nor legally binding, provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128, (August 23, 1989).

EN 95.05, pg. 1590, states, in pertinent part, that:

> This heading covers:
>
> (A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of nondurable material. They include:
>
> (1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc., for Christmas trees (e.g., tinsel, stars, icicles), artificial snow, coloured balls, bells, lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.
>
> (2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees (these are sometimes of the folding type), nativity scenes, Christmas crackers, Christmas stockings, imitation yule logs.
>
> (3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches, (not being articles of pastiche—heading 67.04), and paper hats. However, the heading excludes fancy dress of textile materials, of Chapter 61 or 62.
>
> (4) Throw-balls of paper or cotton-wool, paper streamers (carnival type), cardboard trumpets, "blow-outs", confetti, carnival umbrellas, etc.

It is Customs position that "Angel Fleece" does not meet the criteria for **festive articles.** None of it is traditionally associated with a particular festival, but instead it may be used at parties and various events throughout the year. The "Angel Fleece" is not *ejusdem generis* with those articles cited in EN 95.05 as exemplars of traditional, festive articles. *See, inter alia,* HRLs 952833, dated February 6, 1993 and 951394, dated December 2, 1992. However, application of GRI 1, the terms of the heading and the ENs all indicate that "Angel Fleece" is classifiable as an **entertainment article** of heading 9505, HTSUS.

Subheading 9505.90.40, HTSUS, provides for confetti, paper spirals or streamers, party favors and noisemakers. Subheading 9505.90.60, HTSUS, provides for other festive, carnival or entertainment articles. Classification at the eight digit level depends upon whether the language in the subheadings and ENs indicates that "Angel Fleece" fits the description of non-durable entertainment or party-type articles. Because the article decorates winter scenes as artificial snow, manger scenes as hay, or holiday bags, Customs believes that "Angel Fleece" is a nondurable entertainment article. Therefore, the subject article is classifiable under subheading 9505.90.40, HTSUS, which provides for festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: other: confetti, paper spirals or streamers, party favors and noisemakers; parts and accessories thereof.

For a similar analysis see HRL 953817, dated July 14, 1993, which classified a textile spider web as an entertainment article under the same subheading.

Holding:

The subject "Angel Fleece" is classifiable under subheading 9505.90.40, HTSUS. The general column one rate of duty is 4 percent *ad valorem*.

NYRL 893043 dated December 16, 1993, is hereby revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED LIST OF RECORDS REQUIRED TO BE MAINTAINED AND PRODUCED UNDER 19 U.S.C. 1509(a)(1)(A)

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed "(a)(1)(A) list".

SUMMARY: Section 615 of title VI of the North American Free Trade Agreement Implementation Act (generally referred to as the "Customs Modernization Act") amends 19 U.S.C. 1509 by adding a new subsection (e) which requires the Customs Service to identify and publish a list of records or entry information that is required to be maintained and produced under 19 U.S.C. 1509(a)(1)(A)—commonly referred to as "the (a)(1)(A) list." This document sets forth the proposed list. Before finalizing this proposed list, consideration will be given to any written comments that are timely submitted to Customs.

DATE: Comments must be received on or before October 12, 1994.

ADDRESSES: Comments should be addressed to, and may be inspected, at the Office of Regulatory Audit, U.S. Customs Service, 1301 Constitution Avenue, Washington, D.C. 20229. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: William Inch, Director, Office of Regulatory Audit at (202) 927–1100, or Stuart Seidel, Director, International Trade Compliance Division, Office of Regulations and Rulings at (202) 482–6920.

The proposed list is set forth below.

STUART P. SEIDEL,
Director,
International Trade Compliance Division.

PROPOSED (a)(1)(A) LIST

BACKGROUND

Section 508 of the Tariff Act of 1930, as amended (19 USC 1508), sets forth the general recordkeeping requirements for Customs-related activities. Section 509 of the Tariff Act of 1930, as amended (19 USC 1509) sets forth the procedures for the production and examination of those records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data).

Section 509(a)(1)(A) of the Tariff Act of 1930, as amended by title VI of Public Law 103–182, commonly referred to as the Customs Modernization Act (19 USC 1509(a)(1)(A)), requires the production, within a reasonable time after demand by the Customs Service is made (taking into consideration the number, type and age of the item demanded) if "such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry)". Section 509(e) of the Tariff Act of 1930, as amended by Public Law 103–182 (19 USC 1509(e)) requires the Customs Service to identify and publish a list of the records and entry information that is required to be maintained and produced under subsection (a)(1)(A) of section 509 (19 USC 1509 (a)(1)(A)). This list is commonly referred to as "the (a)(1)(A) list."

The Customs Service has tried to identify all the presently required entry information or records on the following proposed list. However, as automated programs and new procedures are introduced, these may change. In addition, errors and omissions to the list may be discovered upon further review by Customs officials or the trade. Pursuant to section 509(g), the failure to produce listed records or information upon reasonable demand may result in penalty action or liquidation or reliquidation at a higher rate than entered. A recordkeeping penalty may not be assessed if the listed information or records are transmitted to and retained by Customs.

The importing community and Customs officials are reminded that the (a)(1)(A) list only pertains to records or information required for the entry of merchandise. An owner, importer, consignee, importer of record, entry filer, or other party who imports merchandise, files a drawback claim or transports or stores bonded merchandise is also required to make, keep and render for examination and inspection records (including, but not limited to, statements, declarations, documents and electronically generated or machine readable data) which pertain to any such activity or the information contained in the records required by the Tariff Act in connection with any such activity; and are normally kept in the ordinary course of business.

The following list does not replace entry requirements, but is merely provided for information and reference. In the case of the list conflicting with regulatory or statutory requirements, the latter will govern.

LIST OF RECORDS AND INFORMATION REQUIRED

The following records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) are required by law and regulation for the entry of merchandise and are required to be produced by the importer of record to Customs. Information may be submitted to Customs at time of entry in a Customs authorized electronic or paper format. Not every entry type contains the following information, only those items applicable to an entry type will be required/mandatory. The list may be amended as Customs reviews its requirements and continues to implement the Customs Modernization Act.

Sec.	
141.11–141.15	Evidence of right to make entry (airway bill/bill of lading or carrier certificate, etc.).
141.19	Declaration of entry.
141.32	Power of attorney.
141.54	Consolidated shipments authority to make entry.
142.3	Packing list.
142.4	Bond information.

The following records or information is required by § 141.61 on Customs Form 3461 or CF 7533 or the regulations cited.

Sec.	
141.11	IT/BL/AWB number and code.
141.61, 142.3a	Broker/importer filer number.
141.61, 142.3	Ultimate consignee name and number/street address of premises to be delivered.
141.61	Importer of record number.
	Location of goods-code(s)/name(s).
	U.S. port of unlading.
	General order number.
141.61	Carrier code.
	Voyage/flight/trip.
	Vessel code/name.
142.3, 142.3a	Entry number.
	Entry type code.
	Port code.
142.4	Bond information.
	Total value.
142.6	Description of merchandise.
142.6	Manifest quantity.
142.6	H.T.S.U.S.A. number.
	Country of origin.
	Manufacturer ID number (for AD/CVD must be actual manufacturer).
	Signature of applicant.
	Arrival date.
	Elected entry date.

In addition to the information listed above, the following records or items of information are required by law and regulation for the entry of merchandise and are presently required to be produced by the importer of record at the time the Customs Form 7501 is filed.

Sec.	
10.108	Lease statement.
10.102	Duty free entry certificate (9808.00.30009 HTS).
141.61	Entry date.
141.61	Entry summary date.
141.61	Exporting country and date exported.
	I.T. (in-bond) entry date.
	Currency.
	Mode of transportation (MOT code).
	Reference number.
	Textile category number.
	Foreign port of lading.
	Import date and line numbers.
141.61	Entered value, charges, and relationship.
141.61	Applicable H.T.S.U.S.A. rate, ADA/CVD rate, I.R.C. rate, and/or Visa number, duty, I.R. tax, and fees (e.g. HMF, MPF, cotton).
141.61	Importing carrier name.
141.61	Importer of record name and address.
141.61	ADA/CVD case number.
141.61	Gross weight.
141.61	Net quantity in H.T.S.U.S.A. units.
141.61	Relationship.
141.61	Signature of declarant, title, and date.
	Manifest quantity.
141.83, 141.86	Invoice information which includes—e.g. date, number, merchandise (commercial product) description, quantities, values, unit price, trade terms, part, model, style, marks and numbers, name and address of foreign party responsible for invoicing.
	Contract.
	Purchase order.
	Terms of sale.
141.82	Conveyance name/number.
	Shipping quantities.
	Shipping units of measurements.
	Manifest description of goods.
	Tariff description, quantity, and unit of measure.
141.61	Non-dutiable charges.
	Foreign trade zone designation and status designation.
141.61	Identification number for merchandise subject to anti-dumping or countervailing duty order.
	Indication of eligibility for special access program (9802/GSP/CBI)
141.89	CF 5523.
141.89, et al.	Corrected commercial invoice.
141.86(e)	Packing list 27. to 97.—Reserved.
142.3	Bond number, bond type code and surety code.
142.3	Ultimate consignee address.
177.8	Binding ruling identification number.

19 CFR	Documents/records or information required for entry of special categories of merchandise (documents only required for merchandise entries covered by the sections listed). *These are In addition to any documents/records or information required by other agencies in their regulations for the entry of merchandise:*
Sec.	
4.14	CF 226 Information for vessel repairs, parts and equipment.
	Documents required for entry of articles exported and returned:
10.1–10.6	Foreign shipper's declaration or master's certificate.
	Declaration for free entry by owner, importer or consignee. CF 3311.
10.7	Certificate from foreign shipper for reusable containers.
10.8	Declaration of person performing alterations or repairs.
	Declaration for non-conforming merchandise.
10.9	Declaration of processing.
10.24	Declaration by assembler.
	Endorsement by importer.
10.31, 10.35	Documents required for temporary importations under bond.
	Information required, bond or carnet.
10.36	Lists for samples, professional equipment, theatrical effects.
	Documents required for instruments of international traffic.
10.41	Application, bond or TIR carnet.
	Note: Additional 1508 records: *see* 10.41b(e).
10.43	Documents required for exempt organizations.
10.46	Request from head of agency for 9808.00.10/20 treatment.
	Documents required for works of art:
10.48	Declaration of artist, seller or shipper, curator, etc.
10.49, 10.52	Declaration by institution.
10.53	Declaration by importer.
	USFWS Form 3–177, if appropriate.
10.59, 10.63	Documents/CF 5125/for withdrawal of ship supplies.
10.66, 10.67	Declarations for articles exported and returned.
10.68, 10.69	Documents for commercial samples, tools, theatrical effects.
10.70, 10.71	Purebred breeding certificate.
10.84	Automotive products certificate.
10.90	Master records and metal matrices: detailed statement of cost of production.
10.98	Declarations for copper fluxing material.
10.99	Declaration of non-beverage ethyl alcohol. ATF permit.
10.101–10.102	Stipulation for government shipments and/or certification for government duty-free entries, etc.
10.107	Report for rescue and relief equipment.
15 CFR 301	Requirements for entry of scientific and educational apparatus.
10.121	Certificate from USIA for visual/auditory materials.
10.134	Declaration of actual use.
10.138	End use certificate.
10.171	Documents, etc. required for entries of GSP merchandise:
10.173, 10.175	GSP declaration.
10.174	Evidence of direct shipment.
10.179	Certificate of importer of crude petroleum.
10.180	Certificate of fresh, chilled or frozen beef.
10.183	Civil aircraft parts/simulator documentation and certifications.
10.191–10.198	Documents, etc. required for entries of CBI merchandise:
	CBI declaration of origin.
10.307*	Documents, etc. required for entries under CFTA*:
	Certificate of origin, CF353.

*CFTA provisions are suspended while NAFTA remains in effect. See part 181.

Sec.	
12.6	European Community cheese affidavit.
12.7	HHS permit for milk or cream importation.
12.11	Notice of arrival for plant and plant products.
12.17	APHIS permit animal viruses, serums and toxins.
12.21	HHS license for viruses, toxins, antitoxins, etc. for treatment of man.
12.23	Notice of claimed investigational exemption for a new drug.
12.26–12.31	Necessary permits from APHIS, FWS and foreign government certificates when required by the applicable regulation.
12.33	Chop list, proforma invoice and release permit from HHS.
12.34	Certificate of match inspection and importer's declaration.
12.43	Certificate of origin/declarations for goods made by forced labor, etc.
12.61	Shipper's declaration, official certificate for seal and otter skins.
12.73, 12.80	Motor vehicle declarations.
12.85	Boat declarations (CG–5096) and USCG exemption.
12.91	FDA form 2877 and required declarations for electronics products.
12.99	Declarations for switchblade knives.
12.104–12.104i	Cultural property declarations, statements and certificates of origin.
12.105–12.109	Pre-Columbian monumental and architectural sculpture and murals: Certificate of legal exportation. Evidence of exemption.
12.110	Pesticides, etc. notice of arrival.
12.118–12.127	Toxic substances: TSCA statements.
12.130	Textiles and textile products: Single country declaration. Multiple country declaration. VISA.
12.132	NAFTA textile requirements.
54.5	Declaration by importer of use of use of certain metal articles.
54.6(a)	Re-melting certificate.
114	Carnets.
115	Container certificate of approval.
128	Express consignments:
128.21	Manifests with required information.
132.23	Acknowledgement of delivery for mailed items subject to quota.
133.21(b)(6)	Consent from trademark or tradename holder to import otherwise restricted goods.
134.25, 134.36	Certificate of marking; notice to repacker.
141.88	Computed value information.
141.89	Additional invoice information required for certain classes of merchandise, including, but not limited to: *Textile Entries:* Quota charge Statement, if applicable including style number, article number and product. *Steel Entries:* Ordering specifications, including but not limited to, all applicable industry standards and mill certificates, including but not limited to, chemical composition.
143.13	Documents required for appraisement entries: Bills, statements of costs of production. Value declaration.
143.23	Informal entry: commercial invoice plus declaration.
144.12	Warehouse entry information.
145.12	Mail entry information.
148	Supporting documents for personal importations.
151 sp B	Scale weight.
151 sp B	Sugar imports sampling/lab information (chemical analysis).
151 sp C	Petroleum imports sampling/lab information.
	Outturn Report 24. to 25.—Reserved.

Sec.	
151 sp E	Wool and hair invoice information, additional documents.
151 sp F	Cotton.
181.22	NAFTA records.
	Coffee Form O (currently suspended).

OTHER FEDERAL AND STATE AGENCY DOCUMENTS

State and local government documents.
Other Federal agency forms (See 19 CFR Part 12).
Licenses.

FOREIGN TRADE ZONES

Sec.	
146.32	Supporting documents to CF 214.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 94–137)

JEUMONT SCHNEIDER TRANSFORMATEURS, PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND ABB POWER T&D CO., INC., DEFENDANT-INTERVENOR

Court No. 93–09–00646

[ITA remand determination sustained.]

(Dated September 1, 1994)

Wilmer, Cutler & Pickering (John D. Greenwald and *Ronald I. Meltzer)* for plaintiff.
Frank W. Hunger, Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(A. David Lafer* and *John C. Erickson III), Boguslawa B. Thoemmes,* Attorney Advisor, United States Department of Commerce, of counsel, for defendant.
Steptoe & Johnson (Richard O. Cunningham and *Eric C. Emerson)* for defendant-intervenor.

OPINION

RESTANI, *Judge:* This action was remanded to the United States Department of Commerce to consider which antidumping deposit rate should be applied to a new shipper of merchandise subject to an outstanding antidumping order. *See Jeumont Schneider Transformateurs v. United States,* Slip Op. 94–63 (Apr. 20, 1994) *("Jeumont I").*[1] A complicating factor was a change in the "all others" deposit rate for the product at issue, occasioned by court decisions that invalidated use of a unitary "all others" duty deposit rate based on a new shipper rate which differed from the "all others" rate for "old shippers." *See Floral Trade Council v. United States,* 822 F. Supp. 766, 771 (Ct. Int'l Trade 1993); *Federal-Mogul Corp. v. United States,* 822 F. Supp. 782, 788 (Ct. Int'l Trade 1993). Under these decisions 1,all others" rates for "old shippers" continue to apply until they are specifically reviewed.

Commerce chose to implement *Floral Trade* and *Federal-Mogul* by adopting a unitary rate based on the "all others" rate for "old shippers," instead of utilizing a multi-tiered "all others" rate based on date of entry, as Commerce had done in years past. This is explained in detail in *Jeumont I.* Because the new rate structure resulted in a change in

[1] The administrative decision at issue, made pursuant to 19 U.S.C. § 1675, is *Large Power Transformers from France,* 58 Fed. Reg. 44,497 (Dep't Commerce 1993) (final admin. review).

deposit rates for plaintiff and was not dictated by statute or regulation, the case was remanded for plaintiff to demonstrate that in light of its unique circumstances it should receive the benefit of a multi-tiered rate structure. The remand also provided an opportunity for Commerce to consider plaintiff's arguments before selecting a rate to be applied to plaintiff's entries.

Commerce indicates that imposition of the multi-tiered rate for the product at issue would involve some difficulties for Customs, even though the number of shippers is small. Plaintiff has not demonstrated that this assertion is incorrect. As no one has convinced the court, however, that administration of a multi-tiered system for this product would be impossible, or nearly so, the court is most concerned with what prejudice plaintiff faces as a result of the abrupt change in rates to the "old shipper" rate allowed, but not mandated, for new shippers such as plaintiff. *See Floral Trade,* 822 F. Supp. at 771; *Federal-Mogul,* 822 F. Supp. at 788; and *Jeumont I,* Slip Op. 94–63.

First, plaintiff has now requested a specific review of its entries. Thus plaintiff will receive a rate based on its own data and not simply the stale "all others" rate for "old shippers" dating back to the 1970s. *See Jeumont I,* Slip Op. 94–63, at 5 n.2. Second, plaintiff's first set of entries has been liquidated at the rate of 1.82 percent (based on the invalidated new shipper unitary rate). *See Jeumont Schneider Transformateurs v. United States,* Slip Op. 94–114 (July 8, 1994). Third, if specific financial harm to plaintiff was occasioned by the change in deposit rate, which can also be remedied by this action, it has not been demonstrated to the court. It is true that plaintiff is enduring an unpleasant 24 percent deposit rate (unpleasant at least in comparison to a 1.82 percent rate), but the court is unaware of what impact that has had on plaintiff. Furthermore, as a result of the requested review, the 24 percent rate should soon be replaced by a rate specific to plaintiff. If the 24 percent rate is too high, plaintiff will receive refunds with interest. 19 U.S.C. § 1673f(b) (1988).

Based on the foregoing the court cannot conclude that Commerce has abused its discretion to applying the unitary "old shipper" deposit rate to plaintiff.

(Slip Op. 94–138)

NIDEC CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 91–07–00507

[On classification of computer discdrive component(s), judgment in part for the defendant.]

(Decided September 1, 1994)

Barnes, Richardson & Colburn (James S. O'Kelly and *Frederic D. Van Arnam, Jr.)* for the plaintiff.

Frank W. Hunger, Assistant Attorney General; *Joseph I. Liebman,* Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, U.S. Department of Justice *(Barbara M. Epstein);* Office of Assistant Chief Counsel, international Trade Litigation, U.S. Customs Service *(Mark Nackman),* of counsel, for the defendant.

OPINION AND ORDER

AQUILINO, *Judge:* In this action, which has been designated a test case pursuant to CIT Rule 84(b), the plaintiff contests classification of its merchandise by the U.S. Customs Service under subheading 8501.10.40 of the Harmonized Tariff Schedule of the United States ("Electric motors * * *: Motors of an output not exceeding 37.5 W: Of under 18.65 W: * * * Other") while the defendant opines that this is "the first 'motor' case to be adjudicated * * * under the HTSUS," and "the scope of the 'electric motor' heading * * * and the question of whether a precision 'spindle motor' is within the scope of the HTSUS heading [ ] appear to be issues of first impression." Defendant's Post-Trial Memorandum of Law, pp. 2–3.

I

Plaintiff's complaint characterizes the goods as "computer spindles for rigid disk drives" allegedly contained in six entries listed on the summons[1] and maintains that they should be classified under HTSUS subheading 8473.30.40 ("Parts and accessories * * * suitable for use solely or principally with machines of headings 8469 to 8472: * * * Parts and accessories of the machines of heading 8471: Not incorporating a cathode ray tube"). HTSUS heading 8471 encompasses "Automatic data processing machines and units thereof". Other references to the merchandise in this action include "brushless DC motor", "disk drive precision spindle", "disk memory spindle", "motorized computer spindle", "spindle assembly" and "spindle motor". Whatever the nomenclature, there are three elements, namely, a shaft centering a precision spindle, a stator and a rotor, imported either separately or loosely connected. *See* trial transcript ("Tr."), pp. 41, 45–46, 60; plaintiff's Exhibits 5 and 6. They were custom-designed for assembly in computer

[1] Subsequent pretrial preparations led the parties to conclude that two of the six entries, Nos. 0440527–6 and 0440535–9, did "not contain merchandise which is at issue * * * and thus should be severed and dismissed from this action." Pretrial Order, Schedule B.

hard-disc drives of the Hewlett-Packard Company called Coyote I or Coyote II and manufactured by that firm until the stator and the rotor were "outsourced" to the plaintiff, as was the spindle "when Nidec's capabilities matched [H-P's) requirements". Tr. at 25. *See also* Pretrial Order, Schedule C, para. 3.

At trial, Steven M. Johnson of Hewlett-Packard described a computer hard-disc drive as a

> magnetic storage device * * * in the form of rigid, aluminum platters [the media] which are coated with a magnetic material[,] * * * have a * * * read/write head, and by sending current through that head which contains an electromagnet, we can magnetize very small domains in that magnetic media. Then, as we rotate the disk * * * and * * * pass over those magnetic domains they will cause a current in the read/write head which we can then decode and that's how we read and write information in a hard disk drive.

Tr. at 8–9. The Coyote drives have individual discs stacked about a spindle. The Coyote II spindle mounts eight discs and rotates at approximately 4,000 rpm, while the Coyote I was designed to accommodate six discs and speeds of 3,300 rpm. *See id.* at 36. A Hewlett-Packard patent[2] on electrical isolation of the disc stack for the Coyote II depicts various components, including those at issue herein, in the following manner, among others:

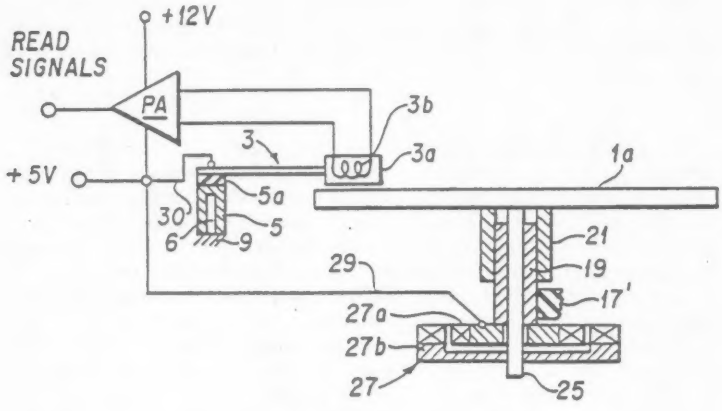

FIG. 6

[2] Plaintiff's Exhibit 13.

Those at bar (and illustrated schematically *supra* as on sheet 3 of the patent dated March 12, 1991) are numbered 19, the spindle; 25, the drive shaft; 27a, the stator; and 27b, the rotor. The patent states:

> The spindle 19 comprises an upper cylindrical support, about which an inner barrel of the disk stack is journalled by bearings. The disks 1a of the disk stack are clamped between annular spacers in a stack between a lower flange of the barrel 21 and a circular clamping plate at the top of the barrel 21. A disk stack drive shaft 25 is journalled by bearings in the spindle 19 and engages and is secured to the disk stack at the clamping plate to rotate the disk stack.[3]

Furthermore:

> The disk stack is rotated by a motor 27, having a stator 27a secured to the bottom end of the spindle 19 and a rotor 27b secured to the bottom end of the disk stack drive shaft 25. Screws, which thread into the spindle 19 through its bottom face secure the motor stator [2]7a to the bottom face of the spindle 19 and also secure connectors on the ends of conductors and to the stator 27a, to provide electrical connections thereto. These electrical connections extend from the stator 27a to the spindle 19 to the bearings to the inner barrel 21 of the disk stack and to the disk stack, including the individual disks 1a. A plug receptacle is secured in a cavity in the bottom face of the base of the mainframe. The conductor 29 is connected to a terminal in that plug to be supplied with a DC bias voltage, the same as that coupled to the magnetic heads 3a at each disk 1a * * *. The other conductor is grounded through a capacitor to provide an AC ground, but which is an open circuit to the DC bias voltage. Thus the DC bias voltage is conducted from the plug, via conductor 29 to the stator 27a, to the spindle 19, to the bearings 23, to the inner barrel 21, and from there to the individual disks 1a.[4]

See also Tr. at 25–38.

In addition to this disc assembly, which "contains basically the mechanical portion"—the read-write heads, the discs, the spindle and the actuator, the "other main assembly", according to the plaintiff, is the printed circuit assembly, which, among other things, contains the drive and commutation electronics for the motor. *See id.* at 9, 16.

Each read/write head rides over a disc on a cushion of air, separated from it at a distance of 10- to 20-millionths of an inch, while the disc rotates at speeds of up to 4,000 times per minute. *See id.* at 11, 12, 17–18. Stability, positioning and speed are crucial to precise operation. *See id.* at 21–23. *See also id.* at 17 (rotation must be exact "both in terms of speed and angle versus time" to permit the heads to read data stored on the discs). Hence, a discdrive has to have an axis of rotation that

> doesn't translate or go up and down or side to side, or wobble at all. So, we have to specify that axis * * * and define it, and produce that

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[3] *Id.*, col. 4, lines 27–35 (reference numbers not set forth on Fig. 6, *supra*, deleted from this quotation).

[4] *Id.*, col. 5, lines 25–48 (reference numbers not set forth on Fig. 6, *supra*, deleted from this quotation).

> theoretical line. And the device we use to do that is called the spindle.

Id. at 18. The spindle "fixes certain degrees of freedom and doesn't allow certain motions through." *Id.* at 83. Its precision rotation minimizes non-repeatable runout, which was described as follows:

> If we imagine writing a circumferential track on the disk, all spindles have some runout. And what that is * * * if we look at a surface of the hub and we rotate the hub * * * and look at radial displacements, those radial displacements would be called runout of a spindle * * *.
>
> Non-repeatable runout would be runout that doesn't repeat. It's different on this revolution and that revolution. * * * [I]t's particularly disastrous because you can write data with your non-repeatable runout going left, for instance, and then you have to be able to read with it going right. So, those errors in a spindle are doubled by the process of writing and then trying to read the same data.

Id. at 23–24. *See also id.* at 205, 205–06 ("The effect of non-repeatable runout is that it is an element * * * of the misregistration of the read/write head relative to the track that it's trying to read." It is "a shift in the position of the track that is being followed.") In sum, and the court so finds, precision of the spindle is crucial to effective storage and retrieval of data.

As shown above, the spindle's remarkable, precise rotation is engendered by the interaction of the rotor and the stator upon electrification. The rotors at issue are permanent magnets bonded into steel stamped rotor cups and surrounded by plastic rings bearing curved blades, which fan to equalize temperatures within the drive. The stators are possessed of electromagnetic poles, a colored circuit disk which contains "hall cells", and lead wires for connection to the drive circuitry. As explained by the plaintiff, "electrical current energizes the wound laminates, which then react with the magnetic poles of the rotor." Plaintiff's Pretrial Brief, p. 13. The hall cells "sense the position of the rotor's magnet, and relay this positional information to the drive electronics found on the disk drive's [printed circuit assembly]." *Id.* The circuitry interprets "the relative position of [the] magnet in the rotor and the stator poles, and then * * * choose[s] which is the optimum phase to apply direct current". Tr. at 53. A steel plate attached to the circuit board protects the reading and writing sensors from electrical interference caused by motor commutation. *See id.* at 33.

The spindles, rotors and stators are assembled into the discdrives in specially-filtered environments known as "clean rooms":

> The first thing we do is take a spindle and bond that with our insulator portion * * * into the base casting. * * * [T]hen we would put the breather filter on. Then [a robot] * * * assemble[s] a stack of media * * * inside the base casting. * * * And it puts the clamp down, drives the screws, and then we put in what we call the magnetic flux assembly. It's another set of permanent magnets in a return path which is part of th[e] actuator.

Id. at 27–28, 41–42. At this point, the assembly is flipped over and the stator is attached to the spindle's shaft on the opposite side of the base casting. The stator's ground line is then secured to the casting's underside. *See id.* at 42. Two screws are "driven through the stator into the spindle." *Id.* The rotor is attached to the spindle's shaft and secured with a lock washer and nut. *See id.* The next step is installation of the head arm assembly. After the base casting is covered, vibration isolators are placed, and the stator connector and the read/write flex circuit are attached. *See id.* at 43. To complete the discdrive, the printed circuit assembly is bolted to the head drive assembly. *See id.*

II

After the foregoing facts had been well-presented and elucidated on both sides[5] at trial, opinions were handed down in *Sumitomo Corp. of America v. United States,* 18 CIT ____, Slip Op. 94–88 (June 2, 1994), and *Nat'l Advanced Systems v. United States,* 26 F.3d 1107 (Fed. Cir. 1994), *aff'g* 17 CIT ____, Slip Op. 93–119 (June 24, 1993), shedding further light on the subject area. At issue in *Sumitomo* was classification, under the Tariff Schedules of the United States ("TSUS"), of voice coil positioning devices for computer hard-disc drives. The court found

> VCPDS are one type of actuator used in the read/write head positioning system. "VCPDs are linear or rotary actuators that are driven by voice coil motors * * * in conjunction with servo systems which sense position information from the disks." The voice coil motor within the VCPD "consists of a frame in which sit a copper covered core, magnets on either side, and a wire-wound coil and arm attached to a fixed fulcrum." The copper core and magnets create a magnetic field around the core in which lies the coil. Varying the electricity supplied to the coil exerts force on the coil, causing it to move back and forth. The coil's motion, in turn, causes the VCPD's arm to pivot on the fulcrum, thereby setting in motion a carriage arm to which the read/write heads are attached. The motion of he carriage arm thus prompts the read/write heads to interact with the magnetic memory media used in the computer.

18 CIT at ____, Slip Op. 94–88 at 3 (citations omitted). Customs classified those devices under TSUS item 682.25 as motors, while the plaintiff claimed classification, like the matter at bar, as parts of automatic data processing machines and units thereof, albeit per TSUS item 676.54.55, arguing, among other things, that the

> judicially-determined meaning of the term "motors" under the TSUS [ ] * * * only applies to those devices which transform electrical energy into mechanical energy through the use of a *rotating* shaft. According to plaintiff, a VCPD "is not a rotating device [and] does not produce rotating shaft power" and, therefore, does not satisfy the definition of the term "motor" as used in the TSUS. Instead, * * * the VCPD is a linear motor that produces a back and forth

[5] The quality of the parties' presentations has obviated any need to grant defendant's motion for leave to file a reply brief now.

> motion. While plaintiff acknowledges the VCPDs produce a very small rotation in the pivot arm of less than 20° of an arc, * * * the actual motion of the coil is linear and thus precludes the merchandise from being a "motor" under the TSUS.
>
> Finally, plaintiff contends the "more than" doctrine * * * precludes Customs from classifying an article under an *eo nomine* provision for the article if the article is "more than" the items described by the provision. * * * [T]he VCPD has various additional features that are not integrated with the merchandise's linear motor and that harness the motor's power for a specialized purpose. * * * [P]laintiff emphasizes the VCPDs are "essential components in hard magnetic disk drives" and have no other function apart from their operation as positioning devices in the disk drives.

Id. at 6–8 (emphasis in original, citations and footnote omitted). The court concluded that, although the subject devices contained the essential elements of an electric motor, "additional components, the VCPD frame, arm, and pivoted bearing in the fulcrum"[6] made the merchandise "more than" an electric motor for tariff purposes. *Id.* at 14.

Nat'l Advanced Systems likewise involved a component for a computer. In that case, the plaintiff prayed for classification of its additional instruction processor or "AIP" also as part of an automatic data processing machine, specifically under item 676.54, TSUS. The trial court, however, affirmed the Service's classification of the AIP as such a machine itself, under TSUS item 676.15, according to the following reasoning:

> * * * The AIP clearly has a calculating mechanism and is a machine. It does not matter that it needs to be installed with other R–9 computer components to be useful. The AIP does not compute until it is installed, but once installed it does computing in the R–9 mainframe computer. The logical and common meaning of computing machine is a machine which computes. Accordingly, the AIP satisfies the very broad language of item 676.15 * * *.

17 CIT at ___, Slip Op. 93–119, at 7 (citations omitted). On appeal, the Federal Circuit concurred, reaffirming an earlier opinion that an article need not have stand-alone capability in order to be classified under an *eo nomine* provision that describes it. 26 F.3d at 1110–11.

III

Computers seem to stand now everywhere, but this omnipresence has not spawned widespread comprehension of their technical complexities. On the other hand, the rules of law governing this court's review of the component(s) at issue herein are not complex. First and foremost, the statute subjecting the sovereign to this review provides that the decision of Customs "is presumed to be correct" and the "burden of proving otherwise shall rest upon the party challenging such decision." 28 U.S.C. § 2639(a)(1).

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[6] *Sumitomo Corp. of America v. United States*, 18 CIT ___, ___, Slip Op. 94–88, at 15 (June 2, 1994).

Necessarily, these rules guided the courts in deciding *Sumitomo* and *Nat'l Advanced Systems*. In the latter case, the court of appeals reaffirmed its corollary thereto, namely, that this "court's duty is to find the *correct* result, by whatever procedure is best suited to the case at hand." *Jarvis Clark Co. v. United States*, 733 F.2d 873, 878, *reh'g denied*, 739 F.2d 628 (Fed.Cir. 1984) (emphasis in original, footnote omitted). *See also Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803); *Semperit Indus. Products, Inc. v. United States*, 18 CIT ___, ___, Slip Op. 94–100, at 16 (June 14, 1994). As indicated, those cases were decided under the TSUS, which has been supplanted by the HTSUS in this action.

Although the defendant does concede that the merchandise at bar is intended for use in the Hewlett-Packard disc-drives[7], it argues that classification under the subheading for computer parts and accessories is precluded by operation of Note 2(a) to Section XVI of the HTSUS. The plaintiff, on the other hand, relies on Note 2(b) thereto. Those sections provide that parts of the machines are to be classified according to the following rules:

> (a) Parts which are goods included in any of the headings of chapters 84 and 85 * * * are in all cases to be classified in their respective headings;
>
> (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading * * * are to be classified with the machines of that kind.

The Explanatory Notes hereon[8] state (at page 1131) that "parts which are suitable for use solely or principally with particular machines or apparatus * * * are classified in the same heading as those machines or apparatus". This statement, however, does "not apply to parts which in themselves constitute an article covered by a heading of this Section * * *; these are in all cases classified in their own appropriate heading even if specifically designed to work as part of a specific machine." *Id.* (emphasis in original). The Explanatory Notes also provide that it "applies in particular to * * * [e]lectric motors". *Id.*

Rule 1 of the General Rules of Interpretation mandates that "classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the [remaining General Rules]." Thus, if the goods are electric motors, even though designed specifically for use in computers, this Rule 1 and Note 2 above require the classification for which Customs opted.

As indicated above, the Service concluded that the goods, when assembled, do constitute a rotating electric motor, which its experts

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[7] *See e.g.*, Defendant's Pre-Trial Memorandum of Law, p. 2; Pretrial Order, Schedule C, para. 3; Tr. at 3–4.

[8] Such notes are considered instructive, not dispositive. *See, e.g., Lynteq, Inc. v. United States*, 976 F.2d 693, 699 (Fed. Cir. 1992); *Guidance for Interpretation of Harmonized System*, T.D. 89–80, 23 Cust.Bull. 379, 381 (1989).

defined as a device to transform electrical energy into mechanical energy *viz.:*

> * * * [A] stator * * * [i]s the static part of the machine * * *. [A] rotor * * * [i]s that part which can rotate. They are coupled magnetically. There is a shaft. * * * [which] maintains the clearance—the air gap between the rotor and the stator. The shaft usually is mounted on some kind of bearing [ ] so it can rotate smoothly. And then would be coupled to the mechanical load for the transmission of mechanical power or * * * energy * * *.

Tr. at 450. *See also id.* at 386. The plaintiff has stipulated to the above-stated essence of an electric motor. Pretrial Order, Schedule C, para. 8 (an "electric motor" is "a device for transforming electric energy into mechanical power, and includes rotary motors"). The Explanatory Notes for HTSUS heading 8501 contain a similar definition. They also explain that:

> * * * *Rotary motors* produce mechanical power in the form of a rotary motion. They are of many types and sizes according to whether they operate on DC or AC, and according to the use or purpose for which they are designed. The motor housing may be adapted to the circumstances in which the motor will operate (e.g., dust proof, drip proof or flame proof motors; non-rigid mountings for belt driven motors, or for motors which will be subject to much vibration).
>
> Many motors may incorporate a fan or other device for keeping the motor cool during running.
>
> With the *exception* of starter motors for internal combustion engines * * * the heading covers electric motors of all types from low power motors for use in instruments, clocks, time switches, sewing machines, toys, etc., up to large powerful motors for rolling mills, etc.
>
> Motors remain classified here even when they are equipped with pulleys, with gears or gear boxes, or with a flexible shaft for operating hand tools.
>
> The heading includes "outboard motors", for the propulsion of boats, in the form of a unit comprising an electric motor, shaft, propeller and a rudder.
>
> Synchronous motors for clock movements are classified here even if equipped with gears; however such synchronous motors also associated with a clock train are *excluded* * * *.

Id. at 1333–34 (emphasis in original).

The defendant adheres to the position that this explanation is "sufficiently broad to encompass motors of many types," including "motors which are designed to be used in specific machines". Defendant's Post-Trial Memorandum of Law, p. 2. It argues that the spindle can be equated with a pulley, gear, or flexible shaft in that it transmits the mechanical energy created by the rotor and the stator to the merchandise's intended load—the discs. The court concurs.

> Although the plaintiff summarizes the spindles' other critical functions in the disk drive, specifically that of providing an

> extremely precise and consistently accurate axis of rotation for the disks, and an extremely precise and consistently accurate mounting structure for the disks, free of outside contaminants and able to react to thermal changes in the disk drive[9,]

and argues that these functions make its goods something more than electric motors, their essence is still that of a motor, not of a spindle, the connector to the discs. Thus, unlike the goods held to be more than a motor under the TSUS in *Sumitomo,* those at bar cannot be classified under the HTSUS as more than that which drives the hard discs in a computer. Nor does plaintiff's promotional material attempt to do otherwise. To quote, for example, from its sales brochure introduced at trial as defendant's exhibit. D:

> Since its founding in July 1973, Nidec has grown to become a world leader in the design and manufacturing of state-of-the-art precision brushless DC electric motors.
>
> * * * * * * *
>
> **Spindle Motors (Brushless DC)**
>
> Spindle motors are designed and manufactured for all sizes of Winchester disc drives: 14″, 9″, 8″, 5.25″, 3.5″ and smaller, as well as for all optical disc drives. The details of each specific application are closely reviewed with the customer to arrive at a spindle motor design which yields the desired performance and lends itself to volume production in our automated facilities.

While the "more than" doctrine may have survived adoption of the HTSUS[10], a broad *eo nomine* provision like that at bar still includes all forms of an article. *See, e.g., Nootka Packing Co. v. United States,* 22 CCPA 464, 470, T.D. 47464 (1935); *Nat'l Advanced Systems v. United States,* 26 F.3d at 1111. On the other hand, of course, this is not to hold that all machines which contain electric motors are classifiable as such[11], only that the motors presented are included in a heading of HTSUS Chapter 85 within the meaning of Note 2(a) to its Section XVI.

IV

Having reached this conclusion, the court takes note of the fact, brought to its attention at trial, that the parties' preparations therefor apparently led to the realization that, although the entry papers contain references to "DC1W", the motors' actual wattage is not only in excess of one but likely the 18.65 maximum for classification under HTSUS subheading 8501.10.40. At trial, the plaintiff sought to excuse those references upon the ground that wattage had not been an issue because the

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[9] Plaintiff's Response to Defendant's Post-Trial Memorandum, p. 20.

At trial, plaintiff's witnesses embraced a textbook definition of a brushless DC motor as including "the drive circuitry which is required for each of the stator phases", and counsel therefore also now argue that the merchandise, imported as it was without this circuitry, is "less than" such a motor. That circuitry, however, transforms the electricity needed, not the nature of the consumer thereof. Stated another way, the circuitry is merely a conduit of that source of power, along with the plug and the lead wires. *Cf. Nat'l Advanced Systems v. United States,* 26 F.3d 1107, 1110–11 (Fed.Cir. 1994).

[10] *See, e.g., Sturm, Customs Law & Administration* § 53.2, at 9 (3d ed. 1993); *Nestle Refrigerated Food Co. v. United States,* 18 CIT ___, ___, Slip Op. 94–118, at 6 (July 20, 1994).

[11] *Cf. United States v. The A.W. Fenton Co.,* 49 CCPA 45, C.A.D. 794 (1962).

goods had been imported as computer parts. *See, e.g.,* Tr. at 305–06, 328–33. Be that as it may, if the parties are able to settle the question of the exact wattage of the motors in lieu of either further administrative or judicial proceedings, they are to agree upon a proposed final judgment, including severance of entry Nos. 0440527–6 and 0440535–9 and specification of the correct subheading of HTSUS Chapter 85, and present the same to the court on or before September 30, 1994.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C94/88 8/29/94 Watson, J.	Astec U.S. (HK) Ltd.	88–08–00673	682.60 3.6%, 3%	676.54 Free of duty	Digital Equipment Corp. *v.* The United States 889 F.2d 267 (Fed. Cir. 1989)	San Francisco Computer power supplies
C94/89 8/29/94 Watson, J.	Astec U.S. (HK) Ltd.	88–08–00674	682.60 3.6%, 3%	676.54 Free of duty	Digital Equipment Corp. *v.* The United States 889 F.2d 267 (Fed. Cir. 1989)	San Francisco Computer power supplies
C94/90 8/29/94 Musgrave, J.	Bradlees, Division of the Stop & Shop Cos., Inc.	91–01–00035	6201.93.35 29.5%	6201.93.30 7.6%	Agreed statement of facts	Boston Boy's ski-jackets of nylon woven fabric
C94/91 8/29/94 Musgrave, J.	Lenworth Metal Products, Ltd., John V. Carr & Son, Inc.	91–09–00693, etc.	7326.90.90 3.9%	8609.00.00 Free of duty	Agreed statement of facts	Detroit and Buffalo Steel shipping containers

Index

Customs Bulletin and Decisions
Vol. 28, No. 38, September 21, 1994

U.S. Customs Service

Treasury Decisions

General Notices

U.S. Court of International Trade

Slip Opinions

Abstracted Decisions

U.S. G.P.O. 1994–301–610–00001